(33,475)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 166

THE STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, ATLANTIC COAST LINE RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION, HOLDING SESSIONS AT BIRMINGHAM

In Equity. No. 613

STATE OF ALABAMA and ALABAMA PUBLIC SERVICE COMMISSION

v.

UNITED STATES et al.

To the Honorable the Judges of the District Court of the United States for the Northern District of Alabama, Southern Division:

The petition of the State of Alabama and Alabama Public Service Commission, complaining of the United States, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, The Alabama Great Southern Railroad Company, Atlanta, Birmingham and Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), Central of Georgia Railway Company, Louisville and Nashville Railroad Company, Mobile and Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company, and The Western Railway of Alabama, respectfully shows:

1

Petitioner, the State of Alabama, is a State of the United States, and Petitioner, Alabama Public Service Commission, is a Commission created under the laws of the State of Alabama, with the duty of regulating rates over common carrier railroads operating in Alabama, and of en- [fol. 2] forcing such regulations in courts or elsewhere. The Alabama Public Service Commission was made a party

respondent to the complaint to the Interstate Commerce Commission on which the order here sought to be set aside was entered.

2

The defendants, the Alabama Great Southern Railroad Company and the Northern Alabama Railway Company, are corporations duly incorporated under the laws of the State of Alabama, with their residence in the Northern District and Southern Division of the United States District Court and engaged in the transportation of commodities intrastate within the State of Alabama. The Atlantic Coast Line Railroad Company is a corporation and resident of Alabama, and of Virginia; and Mobile and Ohio Railroad Company is incorporated by and a resident of Alabama, Mississippi, Tennessee and Kentucky; The Western Railway of Alabama is a corporation and resident of Alabama. The other railroad companies, defendants, are corporations, all corporations of states other than the State of Alabama, but each of said defendants, those incorporated in the State of Alabama and elsewhere, is engaged in transporting commodities of various kinds between points in the State of Alabama, and all of said defendants are engaged in business in Alabama and have agencies in said state on whom service may be had.

3

This is a suit brought to set aside orders of the Interstate Commerce Commission and to enjoin the railroads, defendants, from seeking to file and make effective tariffs in accordance with such orders. The orders complained of grew out of a proceeding before the Interstate Commerce Commission, entitled "Fertilizer and Fertilizer Materials between Southern Points," numbered as Docket 16295, and including in such Docket other Dockets, including one numbered 16336. On July 19, 1926, the Interstate Commerce Commission filed its decision, findings of fact, and report in said consolidated dockets, all of which are of record in the reports of the Interstate Commerce Commission in Vol- [fol. 3] ume 113, beginning at page 389, and in 123 I. C. C., 193, and 129 I. C. C. 215, and all of said report material to an understanding of this case is set out in an exhibit

hereto, marked "Exhibit A," to which reference here and hereafter is prayed as often as may be necessary. In said proceeding, and on the 5th day of July, 1927, the Interstate Commerce Commission made a supplemental report, a copy of the order in which is attached hereto, marked "Exhibit B," and reference thereto prayed as often as may be necessary. In said proceeding, and on the 3rd day of October, 1927, the Interstate Commerce Commission issued an order in Docket 16336, a part of said consolidated hearing, in which order there was a general condemnation of the intrastate rates of the State of Alabama on fertilizers and fertilizer materials, both carload and less than carload. Said order of October 3, 1927, is the order herein sought to be set aside and a full copy thereof is attached hereto, marked "Exhibit C," and reference thereto prayed as often as may be necessary. Each and all of the foregoing described exhibits and the reports of the Interstate Commerce Commission are made part of this petition and are not further copied herein.

4

Jurisdiction of this court depends upon subdivision 28 of section 41, and sections 43, and 45 to 48, inclusive, of Title 28 of the United States Code, which provide for actions to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission, and the jurisdiction of said court depends upon the fact that this action arises under the Constitution and laws of the United States, and is brought to set aside an order of the Interstate Commerce Commission.

[fol. 4]

5

Heretofore, on the 21st day of September, 1921, plaintiff Alabama Public Service Commission instituted an investigation into the reasonableness of freight rates on all commodities moving between points in the State of Alabama, to which investigation the defendants hereto, other than the United States, were respondents; that among the commodities, the rates on which were investigated in said proceeding, were fertilizers and fertilizer materials, both carload and less than carload. On the 26th day of May, 1924, after full hearing and argument, the Alabama Pub-

lic Service Commission prescribed as just and reasonable charges two scales of mileage rates applicable on carload movements of fertilizers and fertilizer materials to be applied intrastate over standard lines within the State of Alabama. A copy of said scales is attached hereto, marked "Exhibit D," and made a part hereof, and reference thereto prayed as often as may be necessary. In the same order rates were prescribed on fertilizer and fertilizer materials moving in less than carload quantities, 120 per cent of the carload rates.

6

Thereafter, and on or about the 30th day of July, 1924, the defendants herein, other than the United States, brought their complaint before the Interstate Commerce Commission, in which the rates so established by the Alabama Public Service Commission were attacked, and in which complaint, after reciting certain applicable facts, the ground of attack was stated in paragraph 13 thereof, as follows:

"Petitioners aver that the rates prescribed by the Alabama Public Service Commission, in its said order of May 26, 1924, on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for intrastate application between points in the State of Alabama, and now in [fol. 5] effect, give an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Alabama on the one hand, and persons and localities in interstate commerce on the other hand, and are unjustly discriminatory against interstate commerce and place an undue burden upon interstate commerce, in violation of Section 3 and subdivisions 3 and 4 of Section 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920.

"Petitioners further show that if the said rates on fertilizers and fertilizer materials, and articles taking the same rates, so established by the Alabama Public Service Commission, are allowed to remain in effect, the purpose of the Interstate Commerce Act will be defeated and the result will be an undue and unreasonable advantage, preference or prejudice between person and localities in interstate com-

merce, on the one hand, and intrastate commerce on the other, and that the interstate commerce will be unduly, unreasonably and unjustly discriminated against; all of which is forbidden and declared to be unlawful by the Interstate Commerce Act."

7

Thereafter, the Interstate Commerce Commission, on the 14th day of October, 1924, giving consideration to said complaint of the defendants other than the United States, and reciting facts of the complaint, ordered:

"(1). That an investigation be, and it is hereby instituted to determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist;

"(2). That all railroads subject to our jurisdiction operating within said State of Alabama be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of such respondents, and that the State of Alabama be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Alabama, at Montgomery, Alabama, and to the Alabama Public Service Commission at Montgomery, Ala.

"(3). That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C."

[fol. 6] 8

By the complaint of the defendants other than the United States, and by the order of the Interstate Commerce Com-

mission of October 14, 1924, there was put in issue the question of whether or not certain intrastate rates in Alabama, referred to in the complaint of said defendants, in their relation to interstate rates, violated section 3 of the Acts to regulate commerce, and this issue was limited to the specific rates complained of in said complaint.

9

The complaint aforesaid, of the defendants other than the United States, was numbered on the docket of the Interstate Commerce Commission as Docket No. 16336, and about the time said complaint was filed, similar complaints relating to other states were filed and the Interstate Commerce Commission combined said complaints and ordered a general investigation, which general investigation included Docket No. 16295, entitled "Fertilizers and Fertilizer Materials between Southern Points," and Docket No. 16335, referring to intrastate rates in the State of South Carolina, and Docket No. 16484, referring to intrastate rates in the State of Georgia. There was also set down at the same time and in the consolidated investigation certain fourth section applications.

10

A general investigation was ordered by the Interstate Commerce Commission on the 7th day of October, 1924, and constituted an inquiry—

"into and concerning said interstate rates on fertilizers, fertilizer compounds, and fertilizer materials and the charges resulting therefrom * * * with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises."

[fol. 7] By such consolidated investigation, interstate rates in Southern territory generally became involved and some portion of the intrastate rates in Alabama were attacked, as aforesaid, on the ground that they were in violation of section 3 of the Acts to Regulate Commerce.

11

Subsequently, hearings were had before the Interstate Commerce Commission and a large amount of testimony taken. The general purport of the testimony was the introduction of various scales of rates in force over different railway lines and in different sections. The only evidence relating to the alleged violations of section 3 by the rates of the State of Alabama was evidence giving the measure of rates in different territories on different lines of railway, and of rates in other proceedings fixed or approved by the Interstate Commerce Commission, and evidence as to the number, location, and general manufacturing capacity of fertilizer factories and mixing plants in the State of Alabama; and evidence that, generally speaking, fertilizer manufacturers were in competition, the one with the other. All the evidence presented to the Interstate Commerce Commission in said consolidated hearings had reference to a different rate level between movements over a single line and movements over two or more lines of railroad. Shippers presented testimony seeking to establish the reasonableness of rate scales, one for each of the two classes of lines, and the carriers likewise submitted such scales. There was no evidence and no contention that there should be a single scale applicable both to single line and multiple line hauls.

12

In stating the issues involved in said general investigation, and specifically in stating the issues with relation to in- [fol. 8] trastate rates, the Interstate Commerce Commission found in its report and stated the issue to be: "And the intrastate rates which have been enforced by some of the States are attacked by the carriers as unreasonably low and it is alleged that they adversely affect manufacturers and dealers shipping into those states over interstate routes." In making this reference the Commission had under consideration the intrastate rates of Alabama as well as of other states. The report of the said Interstate Commerce Commission in said consolidated cases was entered July 19, 1926, and is reported in Volume 113 of the Reports of the Interstate Commerce Commission, beginning at page 389, to which report and decision of the Interstate Com-

merce Commission reference is made so far as same is pertinent to the issues of this case. The pertinent parts of said report are copied in Exhibit "A" attached hereto. The full report and supplemental reports will be shown to the court on the hearing hereof.

13

The complaints on file, the order of investigation of the Interstate Commerce Commission, and the findings of fact of said Commission, were all based on the issue between the then interstate rates and the then intrastate rates, that being the sole issue with reference to discrimination presented to the Interstate Commerce Commission and the evidence was directed to that issue alone.

14

In the findings of the Interstate Commerce Commission, it found that rates applicable to interstate commerce in carloads of mixed fertilizers and of fertilizer materials should for the future be the rates prescribed in the single mileage scale of rates applicable both to single and multiple lines, such scale of the Interstate Commerce Commis- [fol. 9] sion is shown in Exhibit "A," here again referred to, and which scale differs from any scale advocated by shipper or carrier and differs from the Alabama scale; among the differences between the said scale adopted by the Interstate Commerce Commission and the scales adopted by the Alabama Public Service Commission being that the interstate scale applies to all movements, whether over one or more lines of railroad, and the Alabama scales differentiate between movements over a single line and over a multiple of lines. The interstate scale permits grouping for the "longer hauls," while the intrastate scale does not, and under the order of the Interstate Commerce Commission, there is no authority for the grouping of the shorter intrastate hauls, nevertheless the defendant carriers have published tariffs with such grouping for the shorter hauls. The Interstate Commerce Commission in its findings fixed less than carload rates at 130 per cent of the carload rates.

15

At page 435 of the report of the Interstate Commerce Commission, it makes a finding as follows:

"With respect to the intrastate cases we find:

"(1) That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce."

In its finding the relationship is expressed between the rates then prescribed by the Interstate Commerce Commission and the rates then in existence intrastate in Alabama, such relationship not having been involved in any complaint and as to which no hearing was had, the issue arising by the complaints and the order of the Interstate Commerce Commission being limited to the relationship between the rates complained of and existing when the complaints were filed and the order of investigation entered.

16

In said order of investigation, and in the findings thereon, [fol. 10] import rates were not included, although the evidence discloses that the then existing rates, which continue to exist, were made from the ports on a basis of equalization among the ports and not on any mileage scale, and the evidence further showed, and the fact still exists, that the respective manufacturers of fertilizers received their inbound freight, which entered into the total cost of transportation, on rates when the commodity was imported, that recognized a system other than mileage rates, and which inbound rates frequently and generally in combination with the outbound rates showed an equality among manufacturers, whether shipping interstate or intrastate, of total freight charges.

17

The Interstate Commerce Commission, in establishing its interstate rates in its said opinion of July 19, 1926, provided exceptions thereto, such exceptions including, among

others, the following: An equalization of rates into the South from points on the Ohio River, thus disregarding the mileage basis of rates. A similar equalization from the Ohio River crossings, Cairo to Louisville, inclusive, to points in the Mississippi Valley territory, and to points in the Montgomery and Atlanta territories, and generally, the carriers were authorized to make groups of points of origin, and the Commission authorized the carriers to use groups of moderate extent and measure, and to fix the rates to and from representative points in such groups. As shown in Exhibit "B" attached hereto, the interstate rates permit deviations from mileage because of the relief there shown to be granted from the application of the Fourth Section of the Acts to Regulate Commerce, the Interstate Commerce Commission reciting that it was without evidence (123 I. C. C. 195), permits the defendant, The Nashville, Chattanooga and St. Louis Railway, a constructive mileage of 50 miles for a car-float of 20 miles on the Tennessee river in Alabama.

18

The intrastate rates in Alabama, fixed as aforesaid by the Alabama Public Service Commission for carload traffic, [fol. 11] were based upon a minimum carload weight of 20 tons, while the interstate rates with which the said intrastate rates were contrasted, were generally on a carload minimum of 15 tons.

19

Thereafter, the defendant railroad corporations and others, being all the steam railroads operating in Alabama other than the Southern Railway, filed with the Alabama Public Service Commission a petition for authority to make effective July 1, 1927, the same rates on fertilizer and fertilizer materials for intrastate application as were found to be reasonable for interstate application in the opinion of the Interstate Commerce Commission of July 19, 1926. The Southern Railway Company and its system filed a like petition May 18, 1927. After due notice all of said petitions were fully heard, and on July 18, 1927, the Alabama Public Service Commission issued its order in Docket 4890 denying the same.

20

On or about the 1st of September, 1927, the defendants, other than the United States, and certain short line railroads located in the State of Alabama petitioned the Interstate Commerce Commission to issue an order upon its findings of July 19, 1926. No hearing was ever had on said petition, and thereafter, without hearing, the order of October 3, 1927, referred to in the next succeeding paragraph, was entered by the Interstate Commerce Commission.

21

When the Interstate Commerce Commission decided the general investigation herein referred to, on the 19th day of July, 1926, it entered its conclusions and findings, but made no order. Said conclusions and findings of the Inter- [fol. 12] state Commerce Commission were indefinite and did not find, nor did the facts justify a finding, to what extent, if at all, it was necessary to change the intrastate rates in Alabama here involved to remove any unjust discrimination against interstate commerce, if any such existed. The findings of the Interstate Commerce Commission and its subsequent orders related to all the intrastate rates of Alabama without distinguishing between those that might unjustly discriminate and those that clearly did not so discriminate. The defendants continue to maintain intrastate rates within the State of Mississippi lower than the said intrastate rates established by the Alabama Public Service Commission.

22

Thereafter, without opportunity to the Alabama Public Service Commission to be heard, and without definite findings, the Interstate Commerce Commission, on the 3rd day of October, 1927, entered its order directing the defendants herein, other than the United States, "To cease and desist on or before January 3rd, 1928, from practicing the undue prejudice, undue preference and disadvantages and unjust discrimination found in said report (said report being the opinion of July 19, 1926), to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State

of Alabama." The full order of the Interstate Commerce Commission of October 3, 1927, is shown by copy thereof attached hereto and marked "Exhibit C" and reference again thereto prayed as often as may be necessary.

23

After the entry of said order of October 3, 1927, and on the 29th of November, 1927, certain named short line railroads in the State of Alabama petitioned the Interstate Commerce Commission to be included in the terms of the order of October 3, 1927. Said petition has not yet been [fol. 13] heard or acted on, so far as complainants are advised, and none of said petitioners were parties to Docket 16536, nor to any specific complaint attacking these intrastate rates.

24

The carriers, defendants herein, have printed and filed tariffs and supplements to tariffs to become effective January 3, 1928, in which they propose to increase the intrastate rates on fertilizers and fertilizer materials within the State of Alabama to the scale prescribed for general application by the Interstate Commerce Commission on interstate transportation, and the less than carload rates on said commodities to 130 per cent of the scale for carload movements; and unless enjoined, such tariffs will become effective on said date. Such tariffs contain Note 5, which specifically makes them inapplicable in intrastate traffic in Florida, Louisiana, Mississippi, North Carolina, South Carolina and Virginia.

25

If the defendant carriers are permitted to make effective intrastate the rates included in the tariffs already filed and covered by the order of October 3, 1927, petitioners allege and believe that such rates will be unlawful, not supported by any valid order, and not supported by evidence, and contrary to evidence, and such rates will require of shippers the payment of excessive and unlawful charges, to collect which would require a multiplicity of suits and would result in irreparable damage to the shippers shipping intra-

state in the State of Alabama; that such order of October 3, 1927, does not cover all the railroads doing an intrastate business in the transportation of fertilizers and fertilizer materials within the State of Alabama, and there would be confusion and unjust discrimination were such rates permitted to become effective. Such tariffs also, by excepting the State of Mississippi, unjustly discriminate against shippers intrastate in Alabama, and unduly prefer shippers intrastate in Mississippi.

26

In all the orders of the Interstate Commerce Commission in the proceedings hereinbefore referred to and in its findings and conclusions, it treated and regarded a mere dif- [fol. 14] ference in rates as a violation of section 3 of the Acts to Regulate Commerce and disregarded the undisputed evidence that the totality of transportation by manufacturers of fertilizers, of the rates inbound and outbound, did not unjustly prefer any manufacturer or prejudice any other manufacturer. The testimony before the Interstate Commerce Commission discloses that generally there was equality in total transportation charges among all fertilizer manufacturers, and disclosed, and it is a fact, that many of the mixing plants in the State of Alabama did not do more than mix fertilizer materials and ship them to local points, and such plants are not in competition with any manufacturer shipping fertilizers and fertilizer materials interstate into the State of Alabama, and the order and findings of the Interstate Commerce Commission fail to show to what extent, if any, it is necessary to change the intrastate rates to conform them to interstate rates.

27

In the investigation conducted by the Interstate Commerce Commission, in its opinion, findings, and conclusions, and in its orders and judgments, petitioners submit it acted arbitrarily, contrary to law, contrary to the evidence, and without any evidence to support it, in the following particulars, to wit:

(a) In that it found that there was, under the petition of the carriers in Docket No. 16336 aforesaid, a violation of Section 3 of the Acts to Regulate Commerce as to all the

intrastate rates in Alabama when the most that could be said in favor of such findings is the possibility that there is some discrimination as to certain rates along the border lines of Alabama and Georgia and of Alabama and Tennessee.

[fol. 15] (b) In that said order there is a total lack of any finding or evidence showing that all the intrastate rates in Alabama are in competition with interstate rates, and as to the rates in Alabama near its western boundary there was no testimony showing any discrimination or competition or in any way tending to show that such rates were unlawful or in violation of section 3 of the Acts to Regulate Commerce.

(c) In that said order unduly prefers shippers *in* intrastate in Mississippi.

(d) In finding and prescribing a single mileage scale of rates on fertilizer and fertilizer materials applicable on single and multiple lines, when there was no issue, or contention, made by shipper or carrier in favor of such a single scale. The Interstate Commerce Commission found:

"Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint line than for single line hauls";

and there was no evidence with reference to the establishment of one scale applicable both to joint lines and single lines, and in establishing such scale the Interstate Commerce Commission acted without any evidence whatsoever and without any pleadings on the part of any of the parties to the cause in favor of a single scale.

(e) In finding and adjudicating that the intrastate scales of rates in Alabama were violative of section 3 in comparison with the scale of rates fixed in the opinion of July 19, 1926, when the only issue arising in the pleadings and the evidence was the issue between the rates existing prior to July 19, 1926, and the concurrent rates intrastate in Alabama, thus depriving the petitioners and shippers generally of the right to a full hearing and due process of law in violation of the 5th Amendment to the Constitution of the United States, and in violation of the Acts of Congress which grant

to shippers, state authorities and others in such cases a full hearing.

(f) In violation of the Commerce Clause, Paragraph 3, Section 8, of Article I, of the Constitution of the United [fol. 16] States, in that, without pleadings or proof of any burden on interstate commerce, the Interstate Commerce Commission assumed to regulate the entire intrastate commerce on fertilizers and fertilizer materials in the State of Alabama in violation of said constitutional provision and of paragraph 2, subparagraph (a), of section 1 of the Acts to Regulate Commerce.

(g) In ordering fixed maximum and minimum rates applicable intrastate in Alabama, when prescribing interstate rates that are but maximum rates, subject to exceptions and deviations at the will of the carriers.

(h) In permitting for interstate rates variations from the mileage scales from the Ohio River into Alabama, Georgia and Mississippi, and in permitting groupings with distances figured from representative points while denying a similar situation intrastate in the State of Alabama.

(i) In prescribing a relationship between interstate and intrastate rates on fertilizers and fertilizer materials applicable only on domestic shipments, when the true relationship of the rates is impossible of determination without considering import rates.

(j) In determining the existence of unjust discrimination and undue preference by the consideration only of the outbound rates on the commodities shipped by manufacturers when the true relationship between manufacturers and their respective advantages is determinable only by the consideration of the inbound as well as the outbound rates.

(k) In issuing such a general order that no one knows or can know what particular parts of the intrastate rates, if any, are in competition with or discriminate against interstate shippers.

(l) In determining and ordering a condemnation of the intrastate rates in Alabama without any evidence whatso- [fol. 17] ever that such rates violated section 3 of the Acts

to Regulate Commerce, which was the section pleaded as having been violated by such intrastate rates.

Wherefore, petitioners pray:

(1) That on the filing of this petition, and after a hearing had on three days' notice to defendants, this court, under its order, temporarily stay or suspend the enforcement, operation and execution of the order and orders entered by the Interstate Commerce Commission under the proceeding known as "Fertilizers and Fertilizer Materials between Southern Points" insofar as such orders affect intrastate rates within the State of Alabama.

(2) That an interlocutory injunction suspending and restraining the enforcement, operation, and execution of said orders of the Interstate Commerce Commission insofar as such orders affect rates for transportation wholly within the State of Alabama.

(3) Enjoining defendant carriers until final hearing, from collecting the rates prescribed in the tariffs affecting rates on transportation wholly within said State claimed to be filed in conformity with the order of the Interstate Commerce Commission of October 3, 1927, and from collecting other or different rates than those prescribed for intrastate application by the Alabama Public Service Commission in the State of Alabama.

(4) That after further hearing in accordance with law, said court suspend, set aside, and annul the order of October 3, 1927, the findings of July 19, 1926, and any and all other orders or findings, authorizing, permitting or requiring interference with the intrastate rates of Alabama on the commodities of fertilizers and fertilizer materials.

[fol. 18] (5) That a permanent injunction be granted against the carrier defendants, enjoining them as prayed in paragraph (3) of this prayer.

(6) That should the Interstate Commerce Commission permit, on the petition of November 29, 1927, hereinbefore referred to, the carriers therein named to file tariffs in accordance with the order of October 3, 1927, petitioners be permitted to amend and make such carriers parties defend-

ant, and that all orders hereinbefore prayed for shall run against such carriers.

(7) That the court make such other and further order or orders as is meet and proper in the premises.

(8) That notice hereof be served upon the United States by leaving a copy of this petition and the order thereon with the Interstate Commerce Commission; that a temporary restraining order, an interlocutory injunction, and a permanent injunction be granted conformable to the prayers of this petition, and that a writ of subpoena of the United States of America, directed to the said defendants hereinbefore named, commanding them on a date certain to appear and answer this bill of complaint and to abide and perform such order and decree in the premises as the court shall deem proper and required by the principles of equity and good conscience.

(9) That a three-judge court be assembled as required by the statute, and that hearing be had at the earliest possible date to the end that irreparable damage may be pre-
[fol. 19] vented by the granting of a temporary restraining order.

And petitioners will ever pray.

Charlie C. McCall, Attorney General, State of Alabama; J. Q. Smith, Assistant Attorney General of the State of Alabama, Assigned to Alabama Public Service Commission. Address: Montgomery, Alabama. Hugh White, Edgar Watkins, Special Solicitors for Complainants and of Counsel. Address: 403 Atlanta Trust Building, Atlanta, Georgia.

Duly sworn to by J. H. Alldredge. Jurat omitted in printing.

[fol. 20] At Chambers, December 21, 1927

The foregoing bill read and considered. Let notice be given the United States as required by statute and let

service of a subpœna be had on all the other defendants under the rules of this court and let all the defendants be given a copy of this petition and of this order.

And the defendants are required to show cause before the court composed, as required by the statutes of the United States, at Chambers, New Orleans, La., on the 27th day of December, 1927, why a temporary restraining order and an interlocutory injunction shall not be issued.

It is further ordered that at such hearing testimony may be presented by affidavits.

W. I. Grubb, U. S. Judge, Northern District of Alabama.

[fol. 21] Exhibit B to Bill of Complaint

Interstate Commerce Commission

No. 16295

Fertilizer and Fertilizer Materials Between Southern Points

Decided July 5, 1927

Upon further consideration, found:

1. That Fourth Section Order No. 9346 should be amended to authorize carriers operating circuitous routes to meet the rates of the direct lines and to maintain higher rates from and to intermediate points although such rates may exceed the scale prescribed in our original report, 113 I. C. C., 389, if strictly applied.

2. That the petition of the Carolina Railroad for relief from the long-and-short-haul provision of the fourth section with respect to rates to Snow Hill, N. C., should be denied.

3. That the Nelson & Albemarle Railway Company, the Linville River Railway Company, and the Atlanta & St. Andrews Bay Railway Company should be permitted to charge rates 50 cents per ton in excess of

the standard-line scale prescribed in our original report.

4. That the petitions of the Louisville & Nashville on behalf of the Glasgow Railway Company and the Elkton & Guthrie Railroad Company for authority to charge 50 cents per ton in excess of the standard-line scale should be denied.

B. G. Brown and Charles Barham for various southeastern carriers.

J. F. Dalton for Carolina Railway Company.

James Menzies for Atlantic Coast Line Railroad Company.

J. A. Streyer for Nelson & Albemarle Railway Company and Linville River Railway.

H. W. Woolf for Atlanta & St. Andrews Bay Railway Company.

E. A. DeFuniak for Glasgow Railway Company and Elkton & Guthrie Railroad Company.

Second Supplemental Report of the Commission on Further Consideration

EASTMAN, Commissioner:

In our original report herein, 113 I. C. C. 389, we prescribed a distance scale of rates on fertilizers and fertilizer materials within southern territory, and said, at page 424,

* * * in applying such rates to the longer hauls the respondent carriers may for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups.

It appears that in the maintenance of groups under the foregoing authority, the rates between various points will be somewhat higher than they would be if the scale were strictly applied on a point-to-point basis. Such departures [fol. 22] from the scale were forbidden in Fourth Section Order No. 9346, issued in connection with our original report, and the carriers now ask that that order may be amended so that it will not interfere with the grouping plan. No

objection to such an amendment has come to our attention, and in order that reasonable groupings may be maintained some leeway in this respect seems to be necessary. We note, however, that in quite a number of instances the rates will exceed the strict scale basis by as much as 20 cents per ton, and in a few instances by still greater amounts. This goes beyond what we understood would be the limit of departure from the scale, and beyond what seems to be reasonably necessary.

Fourth Section Order No. 9346 will be amended to permit the maintenance of rates from and to intermediate points on circuitous routes in excess of the scale basis strictly applied, but subject, however, to the limitation that on and after September 20, 1927, such rates shall not exceed the scale basis by more than 15 cents per ton.

The Carolina Railroad, a company controlled through stock ownership by the Norfolk Southern, extends from Kinston, N. C., its junction with the Norfolk Southern and the Atlantic Coast Line, 15 miles northwesterly to Snow Hill, N. C., its terminus. Six miles to the east is the line of the East Carolina Railway, which reaches this section from the north and connects with the Norfolk Southern at Farmville, N. C., and with the Atlantic Coast Line at Tarboro, N. C. Maury and Hookerton, N. C., are local stations on the East Carolina, situated almost opposite Snow Hill, Hookerton being the terminus of the line and 13 miles south of Farmville. Dealers at Maury, Hookerton, and Snow Hill compete actively, it is stated, in the intervening farming country. The Carolina Railroad asks for authority to maintain the same rates on fertilizers and materials to Snow Hill as are contemporaneously in effect to Maury, and to maintain rates to the intermediate stations on the basis prescribed in our original report. It is proposed, for example, to maintain a rate from Norfolk, Va., to Snow Hill of $2.65 per ton, this being the rate in effect to Maury and Hookerton, and to maintain a rate of $3.45 to the first station intermediate to Snow Hill.

The Carolina Railroad is in poor financial condition. In 1926 its railway operating income was only $2,715 and it has a deficit in net income of $4,690. In our original report we authorized it to charge 50 cents per ton over and above the standard line rates, but the full amount of this

arbitrary does not accrue to it on traffic interchanged with the Norfolk Southern by reason of the fact that the arbitrary, under our order, is prorated with the latter line. The petitioner shows that for the four years, 1923 to 1926, and for the first four months of 1927, there was a total movement of fertilizer to Snow Hill of 21,050 tons, and to the six intermediate stations on its line of 8,010 tons. It fears the loss of the greater portion of the tonnage to Snow Hill if its rates to that point are not reduced to meet the rates in effect to Maury, inasmuch as the highways in this section are in good condition and the farmers are likely to go to Maury for their fertilizer if the price is more favorable there than at Snow Hill. On the other hand, petitioner does not wish to reduce the rates to the intermediate points in order to conform to the provisions of the fourth section.

[fol. 23] The relief sought is objected to by the Atlantic Coast Line. That carrier points out that there is considerably more territory tributary to Snow Hill than to Maury, and contends that if the farmers would go to farther distant points for their fertilizer because of the higher price at Snow Hill, they would probably go to Farmville instead of to Maury, as the highway to the former is in better condition and the saving in price would be still greater. From our understanding of the situation, also, it seems improbable that the entire tonnage to Snow Hill is used in the territory between that station and Maury; it is more likely that a considerable portion is used in the section west of Snow Hill and is less subject, therefore, to the competition at Maury.

We are not convinced that the relief sought is necessary or desirable under the circumstances, and the petition will therefore, be denied.

In our original report we authorized certain short or weak-line carriers to charge 50 cents per ton over and above the standard line scale, and this arbitrary is now sought by the Nelson & Albemarle Railway, the Linville River Railway, the Atlanta & St. Andrews Bay Railway, and by the Louisville & Nashville on behalf of the Glasgow Railway and the Elkton & Guthrie Railroad. The first three carriers named above are in poor financial condition, and from

a traffic standpoint are said to be in the same position as are the lines that were accorded the arbitrary basis under our original order. No objection has been offered to the relief sought, and we see no reason why a supplemental order should not be entered authorizing these lines to maintain the higher basis.

Both the Glasgow Railway and the Elkton & Guthrie connect with the Louisville & Nashville, and are operated by that carrier under leases whereby it turns over to them the net profits that accrue through their operation. It is understood that the Louisville & Nashville sustains any loss that may occur. Neither the Glasgow nor the Elkton and Guthrie files tariffs with us, nor does either participate in tariffs filed by other lines. They are operated, apparently, as a part of the Louisville & Nashville system. Furthermore, it is not shown that the Glasgow Railway is in financial difficulties. In this connection attention may be called to the fact that in Stock of Glasgow Railway, 117 I. C. C., 578, we authorized it to issue a stock dividend of $100,000.

The relief sought by these lines will be denied.

Appropriate orders will be entered.

[fol. 24] At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 5th Day of July, A. D., 1927

No. 16295

Fertilizer and Fertilizer Materials Between Southern Points

Fifth Supplemental Order

Upon further consideration of the matters and things involved in the above-entitled proceeding, and of the petitions of various carriers for modification of our previous findings and orders herein:

It is ordered, That the terms of the orders entered in connection with the original report in the above-entitled

proceeding under date of July 19, 1926, and as subsequently amended, shall apply to the Atlanta & St. Andrews Bay Railway Company, the Linville River Railway Company, and the Nelson & Albermarle Railway Company to the same extent and in the same manner as they do to the carriers included in Appendix DD to the supplemental report of April 4, 1927.

It is further ordered, That the petition of the Louisville & Nashville Railroad Company on behalf of the Elkton & Guthrie Railroad Company and the Glasgow Railway Company for authority to charge 50 cents per ton for the transportation of fertilizers and fertilizer materials in addition to the standard line scale prescribed in our original report herein, be, and the same are hereby, denied.

It is further ordered, That the petition of the Carolina Railroad Company, dated June 10, 1927, seeking relief from the provisions of the fourth section of the act in connection with rates on fertilizers and fertilizer materials to Snow Hill, N. C., be, and the same is hereby, denied.

Fourth Supplemental Fourth Section Order, No. 9346

Upon consideration of the joint petition of B. G. Brown and Charles Barham on behalf of various carriers parties to the above-entitled proceedings, and good cause appearing therefor:

It is ordered, That Fourth Section Order No. 9346 of July 19, 1926, as subsequently amended, be, and the same is hereby, further amended by adding thereto the following paragraph:

It is further ordered, That should the carriers parties to the above-entitled proceeding, in maintaining the rates herein prescribed, establish groups of destination or origin points, and the circuitous lines or routes shall meet the rates of more direct routes from or to points in said groups, they may maintain higher rates from and to intermediate points even though such rates shall exceed the rates prescribed for the distance involved, provided, however, that in no case shall the rates at such intermediate points exceed the rates prescribed by more than 15 cents per ton on and after September 20, 1927.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 25] EXHIBIT C TO BILL OF COMPLAINT

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 3RD DAY OF OCTOBER, A. D., 1927

No. 16336

In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within the State of Alabama

Order

This case being a proceeding instituted by the Commission upon petition filed and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission under date of July 19, 1926, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

And it appearing, That the carriers parties hereto have published rates for application to the interstate transportation of fertilizers and fertilizer materials which substantially comply with the commission's findings herein, but continue to publish for application to similar traffic within the State of Alabama rates which are upon a substantially lower basis.

It is ordered, That the common carriers by steam railroad, parties to this proceeding, namely, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, Alabama Great Southern Railroad Co., Atlanta, Birmingham & Atlantic Railway Company (B. L. Rugg, Receiver), Central of Georgia Railway Company, Louisville & Nashville Railroad Company, Mobile & Ohio Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company and The Western Railway of Alabama, according as they respectively participate in

the transportation, be, and they are hereby, notified and required to cease and desist, on or before January 3, 1928, from practising the undue prejudice, undue preference and advantages and unjust discrimination found in said report to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State of Alabama.

It is further ordered, That the said carriers, according as they respectively participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 3, 1928, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain rates and charges for the transportation of fertilizers and fertilizer materials in intrastate commerce within the State of Alabama which shall be not less, for corresponding dis-
[fol. 26] tances, than the rates contemporaneously applied by said carriers, in accordance with our order of July 19, 1926, and as subsequently amended, to the transportation by said carriers of fertilizers and fertilizer materials between points in the State of Alabama and points in other states of the United States.

It is further ordered, That this order shall remain in force until the further order of this Commission.

And it is further ordered, That this order be served upon each of the carriers named in the order.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 27] Exhibit D to Bill of Complaint

Maximum Commodity Rates on Fertilizer, Fertilizer Materials, and Related Articles, Carloads

Rates in Cents per Ton of 2,000 Pounds

Distance	1	2
5	80	
10	90	120
15	100	130

Distance	1	2
20	110	140
25	120	150
30	125	155
35	130	160
40	135	165
45	140	170
50	145	175
55	150	180
60	155	185
65	160	190
70	165	195
75	170	200
80	175	205
85	180	210
90	185	215
95	190	220
100	195	225
110	205	235
120	215	245
130	225	255
140	235	265
150	245	275
160	255	275
170	265	285
180	275	295
190	285	305
200	295	315
210	305	325
220	315	335
230	325	345
240	335	355
250	345	365
260	355	375
280	365	385
300	375	395
320	385	405
340	395	415
360	405	415
380	415	425
400	425	435

Distance	1	2
420	435	445
440	445	455
460	455	465
480	465	475
500	475	485
520	485	485

[fol. 28] Explanation of Columns

The specific commodity Rate Tables shown above shall be applied as follows:

Rate Table No. 1. For single-line application between points within this State for the maximum distance of each line referred to in the report as short lines.

Rate Table No. 2. For joint-line application between points within this State located on two or more of the severally named railroads referred to in the report as standard lines.

[fol. 29] In United States District Court

[Title omitted]

Answer of United States—Filed January 12th, 1928

United States of America, defendant, for answer to the petition filed herein against it says:

I. Defendant admits the matters and things alleged in paragraph I in manner and form as alleged.

II. On information and belief, defendant admits the matters and things alleged in paragraph II in manner and form as alleged.

III. Defendant admits the matters and things alleged in paragraph III in manner and form as alleged with this exception: defendant denies the characterization of the petitioners "in said proceeding, and on the 3rd day of October, 1927, the Interstate Commerce Commission issued an order in Docket 16336, a part of said consolidated hearing, in which order there was a general condemnation of the intrastate rates of the State of Alabama on fertilizers and fertilizer materials, both carload and less than carload."

IV. Defendant admits the matters and things alleged in paragraph IV in manner and form as alleged with this exception: defendant denies "the jurisdiction of said court depends upon the fact that this action arises under the Constitution and laws of the United States."

[fol. 30] V. Defendant has no knowledge of the matters and things alleged in paragraph V in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

VI. Defendant admits the matters and things alleged in paragraph VI in manner and form as alleged with this exception: defendant alleges the allegations with respect to the complaint filed in the proceeding referred to in paragraph VI do not constitute or reflect the substance in its entirety of the complaint before the Interstate Commerce Commission, and defendant, therefore, refers to the complaint as a whole for the full contents and purport thereof.

VII. Defendant admits the matters and things alleged in paragraph VII in manner and form as alleged.

VIII. Defendant denies the matters and things alleged in paragraph VIII and each and every part of the same in manner and form as alleged. Defendant alleges that the issues raised by the complaint referred to, and the order of the Commission of October 14, 1924, should be determined from the face of the complaint and order and not by the interpretation of the petitioners placed thereon by the allegations contained in paragraph VIII.

IX. Defendant admits the matters and things alleged in paragraph IX in manner and form as alleged, but alleges that the allegations are inadequate to constitute or reflect the full scope of the investigation conducted by the Interstate Commerce Commission and the steps preliminary thereto. For fuller information with respect to those subjects defendant refers to the report of the Commission of July 19, 1926.

X. Defendant admits the matters and things alleged in paragraph X in manner and form as alleged, but alleges that the quotation from the order of the Commission of

October 7, 1924, does not constitute or reflect the full sub-
[fol. 31] stance of the order; and defendant, therefore, refers to the order in its entirety for the full contents and purport thereof.

XI. Defendant denies the matters and things alleged in paragraph XI and each and every part of the same in manner and form as alleged.

XII. Defendant denies the matters and things alleged in paragraph XII and each and every part of the same in manner and form as alleged with these exceptions: (a) defendant admits the words in quotation marks in paragraph XII, but alleges they do not constitute or reflect the full substance of the report of the Commission, and defendant, therefore, refers to the report in its entirety for the full contents and purport thereof; (b) defendant denies that the excerpts or fragments from the report of the Commission contained in Exhibit A attached to the petition are the pertinent parts of the report; and defendant alleges that the excerpts or fragments do not constitute or reflect the full substance of the report; and defendant, therefore, refers to the report in its entirety for the full contents and purport thereof.

XVI. Defendant denies the matters and things alleged in paragraph XIII and each and every part of the same in manner and form as alleged.

XIV. Defendant denies the matters and things alleged in paragraph XIV and each and every part of the same in manner and form as alleged.

XV. Defendant denies the matters and things alleged in paragraph XV and each and every part of the same in manner and form as alleged with this exception: defendant admits the Commission made the finding referred to and, subject to verification, the words in the quotation marks are correct.

XVI. Defendant denies the matters and things alleged in paragraph XVI and each and every part of the same in manner and form as alleged.

[fol. 32] XVII. Defendant has no knowledge of the matters and things alleged in paragraph XVII in manner and

form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XVIII. Defendant has no knowledge of the matters and things alleged in paragraph XVIII in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XIX. Defendant has no knowledge of the matters and things alleged in paragraph XIX in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XX. Defendant has no knowledge of the matters and things alleged in paragraph XX in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XXI. Defendant has no knowledge of the matters and things alleged in paragraph XXI in manner and form as alleged, it neither admits nor nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XXII. Defendant denies the matters and things alleged in paragraph XXII and each and every part of the same in manner and form as alleged with this exception: defendant admits that on October 3, 1927, the Interstate Commerce Commission entered the order referred to and, subject to verification, that Exhibit C is a true copy thereof.

XXIII. Defendant has no knowledge of the matters and things alleged in paragraph XXIII in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

[fol. 33] XXIV. Defendant has no knowledge of the matters and things alleged in paragraph XXIV in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XXV. Defendant denies the matters and things alleged in paragraph XXV and each and every part of the same in manner and form as alleged.

XXVI. Defendant denies the matters and things alleged in paragraph XXVI and each and every part of the same in manner and form as alleged.

XXVII. Defendant denies the matters and things alleged in paragraph XXVII and each and every part of the same in manner and form as alleged.

Defendant attaches hereto and makes a part of this answer as full and completely as if incorporated herein in extenso, the following reports and orders of the Interstate Commerce Commission in the proceeding No. 16295, and entitled "Fertilizers and Fertilizer Materials between Southern Points," that is to say—

1. Report and order of July 19, 1926, and officially reported as 113 Interstate Commerce Commission Reports, page 389, et seq.

2. Supplemental report and order of April 4, 1927, and officially reported as 123 Interstate Commerce Commission Reports, page 193, et seq.

3. Second Supplemental report and order of July 5, 1927, and officially reported as 129 Interstate Commerce Commission Reports, page 215, et seq.

Further answering, defendant alleges that the matters and things set forth in the petition and sought to be put in issue before the court were all before the Interstate Com- [fol. 34] merce Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act; in its reports in writing, made after full hearing and on due notice to all of the parties, which state its conclusions together with its decision, order or requirement in the premises, the matters and things of which complaint is made were fully considered by the Commission and foreclosed by its findings of fact based on substantial evidence of which the parties were advised.

Defendant alleges that the facts set forth in the reports of the Commission and each and all of the same are true and correct.

Defendant specifically denies (a) any fact or facts alleged in the petition, or any part of the same, which deny, or which seek to deny, any fact or facts found by the Commission; (b) any fact or facts alleged in the petition, or any part of the same, which are inconsistent with any fact or facts found by the Commission; (c) any and all inferences of fact from any particular fact or facts alleged in the petition, or any part of the same, which seek to deny, or which are inconsistent with, any fact or facts found by the Commission; (d) any fact or facts alleged in the petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Commission; (e) any fact or facts alleged in the petition, or any part of the same, which attack or which seek to attack, the action of the Commission, and to show facts other than what the Commission has found and declared; (f) any allegations in the petition, or any part of the same, which allege that facts were found by the Commission in its reports and orders which, as shown on the face thereof, were not so found; (g) any conclusions of law alleged and insisted upon in the petition, or any part of the same, which are inconsistent with any conclusions of law held by the Commission; (h) each and every allegation in the petition contained not herein specifically admitted or denied.

[fol. 35] Wherefore, having fully answered, defendant prays that the petition be dismissed at the cost of the petitioners and for such other and further order as may be appropriate.

Blackburn Esterline, Assistant to the Solicitor General. Charles B. Kennamer, United States Attorney.

[fol. 36] *Duly sworn to by Blackburn Esterline. Jurat omitted in printing.*

[fol. 37] EXHIBIT No. 1 TO ANSWER OF UNITED STATES—Filed January 12th, 1928

[fol. 37-1] INTERSTATE COMMERCE COMMISSION

No. 16395[1]

Fertilizers and Fertilizer Materials Between Southern Points

Submitted April 16, 1926. Decided July 19, 1926

1. The general basis of rates on fertilizer and fertilizer materials in southern territory being under consideration; Found, That in view of the characteristics of this traffic it is reasonably entitled to a relatively low basis of rates.

2. Maximum reasonable rates based on a distance scale prescribed for uniform application over standard lines between points in southern territory.

3. Certain so-called short or weak lines accorded arbitraries or a percentage over the rates prescribed for standard lines.

4. Undue prejudice found to exist against persons and localities in interstate commerce and unjust discrimination against interstate commerce by reason of the intrastate rates in Alabama.

5. The effective intrastate rates in Georgia and South Carolina found not to be unlawful for the future, except in individual instances.

6. Fourth-section relief granted.

[1] This report also embraces Docket No. 16337, In the Matter of Rates on Fertilizers and Fertilizer Materials Intrastate within State of South Carolina; Docket No. 16396, In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within State of Alabama; and Docket No. 16484, In the Matter of Rates on Fertilizer and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within State of Georgia, also various fourth-section applications listed in Appendix E.

Frank W. Gwathmey for Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Seaboard Air Line Railway Company, and others; W. N. McGehee for Southern Railway system lines and Mobile & Ohio Railroad Company; James Menzies for Atlantic Coast Line Railroad Company; William B. Rodman and J. F. Dalton for Norfolk Southern Railroad Company, Carolina Railroad, and Kinston Carolina Railroad; Roy Pope and Gus Richmond for Atlanta, Birmingham & Atlantic Railway and receiver; Edward D. Mohr and L. L. Drescher for Louisville & Nashville Railroad Company; J. L. Sheppard for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company; Alex M. Bull for Gulf, Mobile & Northern Railroad and Birmingham & Northwestern Railway Company; J. E. Monroe for Alabama & Vicksburg Railway; N. V. Hutchinson for Columbus & Greenville Railway Company; and E. C. Ash for Alabama, [fol. 37-2] Tennessee & Northern Railroad Corporation and Alabama & Northwestern Railroad Company.

J. A. Streyer for members of American Short Line Railroad Association.

A. G. Patterson, Hugh White, and J. H. Alldredge for Alabama Public Service Commission; James A. Perry and E. M. Price for Georgia Public Service Commission; R. Hudson Burr and J. H. Tench for Florida Railroad Commission; M. C. Moore and B. F. Martin for Mississippi Railroad Commission; A. J. Maxwell for North Carolina Corporation Commission; Rush H. Knox, attorney general of Mississippi; and Oscar Vest, Isaac Wilder, Moses R. Glenn, and L. F. Orr for Kentucky Railroad Commission.

Charles E. Cotterill for American Farm Bureau Federation, Southern Traffic League, National Fertilizer Association, and others; Harry T. Moore for Atlanta Freight Bureau; John A. O'Rourke for West Palm Beach Traffic Bureau, West Palm Beach, Fla., and Miami Traffic Bureau, Miami, Fla.; R. L. Askea for Raleigh Freight Traffic Bureau, Durham, N. C., Chamber of Commerce, Farmville Oil & Fertilizer Company, and Fremont Oil Mill Company; T. A. Bosley for National Fertilizer Association, Southern Fertilizer Association, Southern Traffic League, and Virginia-Carolina Chemical Company; A. J. Young for Inter-

national Agricultural Corporation; M. R. Beaman for Eastern Carolina Wholesale Dealers & Manufacturers Association; M. Walsh and E. M. Weatherly for Dothan Chamber of Commerce; Jas. S. Davant for Memphis Freight Bureau; J. L. Roberts for Barrett Company; W. H. Hendley for Spartanburg Transportation Association; Thomas J. Burke for Charleston Traffic Bureau; A. J. Whitman for American Agricultural Chemical Company; and R. L. Rogers for Swift & Company.

J. O. Cromwell for Macon Chamber of Commerce and Cotton States Fertilizer Company; Frank E. Harrison for Florida Traffic Association; R. G. Cobb for Mobile Chamber of Commerce; E. B. Gaines for Savannah Traffic Bureau; L. F. Daspit for Louisiana Farm Bureau Federation; Fred Juenger for Texas Gulf Sulphur Company; Thos. D. Guthrie for Jacksonville Traffic Bureau, Incorporated; C. W. Hayward for City of Meridian, Miss., and Meridian Traffic Bureau; D. A. Dashiell for Royster Guana Company; and Hugh M. Frampton and R. O. E. Davis for United States Department of Agriculture.

Robert E. Quirk and Norman, Quirk & Graham for American Cyanamid Company; Carl Giessow and Edgar Moulton for New Orleans Joint Traffic Bureau; C. L. Neill and T. P. Goodwin for Mississippi Farm Bureau Federation; [fol. 37-3] F. W. Beyer for Nitrate Agencies Company and W. R. Grance & Company; J. A. Parrish for Lakeland Chamber of Commerce and Non-Acid Fertilizer & Chemical Company; J. W. Kirtland for Standard Chemical Company; T. M. Henderson and N. S. Owen for Read Phosphate Company and Traffic Bureau of Nashville; M. M. Caskie for Alabama Cottonseed Crushers Association and Montgomery Chamber of Commerce; H. E. Snow for Southeastern Live Stock Association; and B. F. Martin and A. R. Fallon for Union Sulphur Company.

Hugo Ignatius and H. P. Friedman for Portsmouth Oil & Refining Company, Montezuma Cotton Oil Company, Perkins Oil Company, and others; Hugo Ignatius for Buckeye Cotton Oil Company, Southern Cotton Oil Company, Mississippi Cottonseed Crushers Association, and others; Wm. H. Fleming for Southern States Phosphate & Fertilizer Company; W. C. Ermon for Southern Cotton Oil Com-

pany, Southern Traffic League, and Interstate Cotton Seed Crushers Association; F. G. Moore for Davison Chemical Company and National Fertilizer Association; W. Albert Wilde for Lexington Board of Commerce; and Mason Manghum and T. D. Geoghegan for Virginia Shippers' Association.

REPORT OF THE COMMISSION

EASTMAN, Commissioner:

Dissatisfaction on the part of shippers and users as well as of carriers with the rates on commercial fertilizer and fertilizer materials in southern territory[4] has for some time been increasingly evident. Our decisions upon such formal complaints as have been brought have served only to mitigate the discontent in the particular sections affected. Interstate rates vary greatly for substantially similar hauls; many indefensible fourth-section departures exist; and the intrastate rates which have been enforced by some of the States are attacked by the carriers as unreasonably low, and it is alleged that they adversely affect manufacturers and dealers shipping into those States over interstate routes. During 1924 three petitions were filed with us by carriers seeking relief under section 13 of the interstate commerce act from the intrastate rates, respectively, in South Carolina, Alabama, and Georgia.[5] Three times the rates on fertilizer from Norfolk, Va., to points in North Carolina have been before us in what have come to be known as the Royster cases,[6] but the rates there finally prescribed are now deemed unsatisfactory by the Corpora- [fol. 37-4] tion Commission of North Carolina. These conditions obtaining throughout southern territory led us on October 7, 1924, upon our own motion, to institute a general investigation and inquiry—

into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the

[4] A description of southern territory as covered by this investigation will be found in Appendix A. In general, it embraces southern classification territory, including the State of Virginia.

[5] Dockets Nos. 16535, 16536, and 16484, respectively, already referred to.

[6] Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458; Same v. Same, 38 I. C. C. 190; and Same v. Same, 50 I. C. C. 34.

changes resulting therefrom, * * * with a view to determining whether said rates and charges are unreasonable or are unduly prejudical to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

This order is given in full in Appendix A.

The purpose of this proceeding, therefore, is to determine upon a basis of interstate rates for the movement of fertilizers and fertilizer materials throughout southern territory which will be reasonable and free from undue prejudice and preference, and which will conform, as nearly as may be, to the provisions of the fourth section. With the proceeding have been consolidated for hearing and disposition the three section 13 cases already referred to. While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can appropriately and fairly be used as a basis for uniformity in both classes of rates has been recognized from the outset.

At the initial hearing the parties were advised that the principles of the so-called Hoch-Smith resolution are now a part of the law, and that conclusions would be reached with those principles in mind.

The State commissions of Alabama, Georgia, Florida, Mississippi, Kentucky, and North Carolina were represented at the hearings, and they took an active and helpful part in developing the record. At the instance of the shipping interests, the United States Department of Agriculture also participated, its aim being merely to present certain facts and statistics relative to the industry and to the use of fertilizer.

A report proposed by the examiner was served upon the parties, and to that report exceptions were filed by the carriers as well as by other interests. Our conclusions differ somewhat from those which he proposed.

Importance of Fertilizer to Southern Territory

Of the various sections of the country, southern territory is by far the largest user of fertilizer. Out of a total consumption in the United States of 6,647,308 tons in 1923 it used 4,220,807 tons. Of the Southern States, North Carolina, South Carolina, and Georgia led in the amount con-

sumed, their total for that year being 2,436,375 tons. In 1924 the total production was 7,272,000 tons, of which southern territory used 4,680,000 tons, a little less than [fol. 37-5] half of which was used on cotton alone. Of a total of 573 plants in the United States devoted exclusively to the production of fertilizer, 422 were in southern territory, Georgia having more than 120 plants. In 1923 the average consumption of fertilizer per acre, determined by dividing the total amount used by the acreage under cultivation, was as follows:

	Pounds
Florida	557
North Carolina	298
South Carolina	231
Virginia	210
Georgia	136
Alabama	103
Mississippi	65
Louisiana	51
Tennessee	32
Kentucky	30

The above figures do not represent the actual application per acre, for not all cultivated lands are fertilized. For example, in Alabama the average amount used per acre on fertilized crops was about 230 pounds. In some cases as high as 800 pounds per acre are used on cotton, but this is much above the average. In tobacco growing and truck farming the application per acre is somewhat greater than in the case of cotton. The relatively large consumption in Florida is accounted for by its large production of vegetables and fruits.

Fertilizer tonnage is also of relatively greater importance to the southern carriers than to the lines in other sections. In 1923 such tonnage of the southern roads represented 1.46 per cent of their total freight tonnage, as compared with 0.35 per cent in the eastern district and 0.18 per cent in the western district. The Atlantic Coast Line leads the southern carriers in the total of fertilizer handled, with the Southern second and the Seaboard Air Line third. In the ratio of fertilizer to total freight, the Central of Georgia ranks first, its fertilizer tonnage being 6.61 per cent of

the total, with the Atlantic Coast Line second and the Norfolk Southern third. These tonnage figures do not include such materials as potash, acid phosphate, and nitrate of soda, which, for purposes of our statistical returns, are included in commodity Group 66 chemicals and explosives. If these were included, the fertilizer tonnage figures would be appreciably increased. The total revenue of Class I roads in the southern district for 1923 from such tonnage was $10,307,000, or 1.3 per cent of the total revenue from all freight handled. In the eastern district the revenue from fertilizer tonnage was but 0.3 per cent of the total. The revenue of the Atlantic Coast Line from this source was 4.7 per cent of its total freight revenue in 1924, and that of the Southern for the first seven months of 1924 was 3.63 per cent of its total for the same period.

[fol. 37-6] It is beyond debate that agriculture in the South can not be conducted successfully without the use of fertilizer, and agriculture has been and probably still is the basic industry of that section. A vice president of the American Farm Bureau Federation testified that—

the relationship which fertilizer bears to successful agriculture is immediate and so direct as in large measure to control the tonnage of agricultural products transportable by the carriers and indirectly to control their total tonnage by reason of the influence which successful agriculture has upon general conditions of prosperity throughout all lines of business in the South.

To the use of fertilizer in the South Atlantic States is due, it is said, one-half of the tobacco crop, one-third of the crop of white and sweet potatoes, wheat, and garden truck, and two-thirds of the cotton crop. Experiments conducted by the North Carolina Department of Agriculture proved that an application of 800 pounds of fertilizer per acre resulted in an increased production, over unfertilized soil, of 834 pounds of seed cotton per acre. In Alabama, experiments showed that while there was an average production of but 98 pounds of lint cotton per acre without fertilization, 203 pounds were produced by the use of 325 pounds of fertilizer per acre, and 260 pounds by the use of 650 pounds of fertilizer. Returns from the entire southern cotton area in 1924 indicated that with an average expenditure of $1.73

per acre for fertilizer the yield was 36 pounds of lint cotton, whereas with an expenditure of $5.73 the yield was 637 pounds. It takes approximately 3 pounds of seed cotton to produce 1 pound of lint.

The Carriers' Proposal

In order to remove the many inconsistencies in the fertilizer-rate structure, the carriers propose for uniform application throughout southern territory, except as hereinafter noted, a distance scale of rates based on the scale prescribed in Royster Guano Co. v. A. C. L. R. R. Co., 50 I. C. C. 34, and hereinafter referred to as the Royster scale. That proceeding had to do with rates on fertilizer from Norfolk, Va., to points in North Carolina, and these rates, as has been stated, we thrice considered. They were first attacked by the Royster Guano Company in 1913 as unreasonable and unduly prejudicial to Norfolk and unduly preferential of Wilmington, N. C. On July 1, 1914, we prescribed a maximum distance scale with a carload minimum of 20,000 pounds. 31 I. C. C. 458. On October 13, 1914, a special committee appointed by the Governor of North Carolina promulgated certain State rates, and among them rates on fertilizer which were materially lower than those we had prescribed. This brought further complaint from the Royster Guano Company. On February 18, 1916, [fol. 37-7] we issued our second report reaffirming our previous finding and requiring the same level of rates to be maintained within North Carolina, in order to remove the undue prejudice to Norfolk and shippers at that point. Subsequently this second order was amended to increase the carload minimum from 20,000 to 24,000 pounds. Later, upon petition of the Corporation Commission of North Carolina, the amended order was vacated and the proceeding reopened for further hearing, that commission coming in as an intervener. As the outcome of the further hearing we adopted the intrastate rates in North Carolina as reasonable maximum rates from Norfolk to points in that State, but increased the carload minimum to 30,000 pounds.

The carriers do not propose this scale as a measure of maximum reasonable rates, but as a proper basis under all the circumstances and conditions. It is shown below for representative distances, with ton-mile and car-mile earn-

ings, the latter being based on the proposed minimum of 30,000 pounds. All rates hereinafter are stated in amounts per net ton. The scale is shown in its entirety in Appendix C.

	Single line			Joint line		
	Proposed rate	Revenue per ton-mile	Revenue per car-mile	Proposed rate	Revenue per ton-mile	Rev per car mile
		Cents	Cents		Cents	Cents
5 miles	$0.90	18.00	270			
10 miles	1.02	10.20	153	$1.36	10.60	204
25 miles	1.47	5.88	88	1.81	7.24	108
50 miles	1.80	3.60	54	2.14	4.28	64
75 miles	2.14	2.86	42	2.48	3.31	49
100 miles	2.50	2.50	38	2.82	2.82	42
150 miles	2.93	1.95	29	3.27	2.18	32
200 miles	3.38	1.69	25	3.72	1.86	27
250 miles	3.72	1.49	22	4.05	1.60	24
300 miles	4.05	1.35	20	4.39	1.46	22
400 miles	4.84	1.21	18	5.07	1.27	19
500 miles	5.52	1.12	16	5.74	1.15	17
600 miles	6.08	1.00	15.2	6.30	1.05	15.7
700 miles	6.64	.95	14.2	6.87	.98	14.7
800 miles	7.20	.90	13.5	7.43	.93	13.9
900 miles	7.77	.86	13.0	8.01	.89	13.4
1,000 miles	8.33	.83	12.5	8.55	.86	12.8

The foregoing scale is intended to apply not only on mixed fertilizers but on the various materials entering into their manufacture. These materials are set out in Appendix B. Various carload minima are proposed in connection with the different materials, as shown in the appendix, ranging from 30,000 to 60,000 pounds, the majority taking 40,000 pounds. It will be observed from this list that phosphate rock is included only in its ground form and that sulphuric acid, with which the ground phosphate rock is treated, is not named. Neither is ground limestone embraced in the list. These commodities generally take some- [fol. 37-8] what lower rates than those accorded other materials, and all parties seem willing that they should be excluded from consideration in this proceeding.

In presenting this scale for application throughout southern territory the carriers explain that it is not intended to apply between points on the Chesapeake & Ohio, between points on the Norfolk & Western from Norfolk, Va., to Cincinnati, Ohio, nor between points on the Virginian from Norfolk to Deepwater, W. Va., these lines being embraced

in trunk-line territory and their rates being governed by the official classification. The exclusion of rates between these points, except local points on the Chesapeake & Ohio in Kentucky which were not included in the order, seems to have been predicated on anticipation that these carriers would individually participate in the proceeding to protect their respective interests; but although they were made parties, no appearances were entered on their behalf.

The Royster scale is proposed for uniform application by the carriers because it has been prescribed in two subsequent cases, namely, Freight Adjustment Steering Committee v. A. C. L. R. R. Co., 53 I. C. C. 506, decided June 9, 1919, and Goldsborough Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315, decided July 10, 1924, and because rates as high as or higher than that scale have been prescribed or approved in still other cases.[5] It is, therefore, considered that this scale has been impressed with our sanction. The cases above cited involved, respectively, rates on fertilizer and fertilizer materials from Charleston, S. C., to North Carolina destinations, and from Wilmington, N. C., to destinations in the same State. Besides the rates maintained in accordance with our decisions, the Royster scale is also in effect from Richmond, Va., to destinations in North Carolina, from Wilmington and other points in North Carolina to destinations in South Carolina, from points in South Carolina to destinations in North Carolina, and from points in North Carolina to destinations in Virginia. The cases referred to in footnote 5 had to do, for the most part, with rates from and to specific points and covered territory of limited scope.

Of the total fertilizer tonnage handled by the Atlantic Coast Line in 1923, 46 per cent moved, it is testified, under the Royster scale. It is said to be lower, generally speaking, than the rates from Savannah, Atlanta, Elberton, and Macon, Ga., to various destinations in South Carolina; from Albany, Ga., to destinations in Florida; from Charleston to South Carolina destinations on imported fertilizer materials; from Dothan and Montgomery, Ala., to certain

[5] Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., 50 I. C. C. 253; Meridian Traffic Bureau v. S. Ry. Co., 69 I. C. C. 5; Meridian Rate Case, 68 I. C. C. 179; Fertilizer to Montezuma, 74 I. C. C. 657; Fertilizers from New Orleans, 100 I. C. C. 64.

[fol. 37-9] Georgia destinations; and in certain other instances. Rates within Florida and Virginia are both higher and lower than the Royster scale. The carriers do not seek to convey the impression that, taken as a whole, the rates in the South are to-day higher than the Royster scale. It is merely claimed that numerous reductions will be effected by its uniform application.

About 70 per cent of the tonnage of fertilizer and fertilizer materials moving in southern territory is intrastate traffic, and the intrastate rates in the several States are compared below with the Royster scale, all being stated in cents:

	Va.¹	N. C.	S. C.	Ga.	Fla.¹	Ala.	Miss.¹	La.¹	Tenn.¹	Ky.	Carriers' proposed scale
5 miles	45	90	90	68	147	80	90	90	135	90	90
10 miles	45	102	90	102	147	90	100	102	135	90	102
25 miles	102	147	120	124	169	120	100	102	147	113	147
50 miles	169	180	169	158	203	145	100	102	169	169	180
75 miles	203	214	198	180	237	170	120	113	203	225	214
100 miles	225	259	228	214	259	195	140	147	225	259	259
125 miles	259	270	258	259	282	225	180	180	225	259	270
150 miles	259	293	288	282	293	245	220	214	259	259	293
175 miles	293	327	307	304	315	275	260	248	259	270	327
200 miles	304	338	327	315	315	295	280	259	282	282	338
225 miles	315	360	337	338	315	325	320	259	282	293	360
250 miles	349	372	337	349	327	345	350	270	282	315	372
275 miles	394	394	337	360	327	365	370	282		315	394
300 miles	405	405	337	383	327	375	400	293		327	405
350 miles	450	450		439	338	405					450
400 miles	495	484		462	349	425					484
450 miles	518	518		484	360	455					518
500 miles	552	551			360	475					552

[1] Scale 1 of the Southern, applicable south of Richmond and Danville, apparently the lowest scale in the State, but which the shippers say is fairly representative of Virginia rates.

[2] In Florida, fertilizer materials take 75 per cent of fertilizer rates.

[3] The intrastate rates in Mississippi are not uniform over all lines. Those shown are in effect on the Illinois Central, and up to and including 170 miles are the same as those published by the Mobile & Ohio, New Orleans & Northeastern, St. Louis & San Francisco, and Gulf, Mobile & Northern. Beyond 170 miles the rates are lower than shown on the Yazoo & Mississippi Valley, Mobile & Ohio, and the Gulf, Mobile & Northern, the other lines mentioned not maintaining rates for the longer distances. The rate on the Y. & M. V. for 300 miles is $2.93, and on the G., M. & N. $2.60.

[4] East of the Mississippi River.

[5] From Chattanooga, Tenn., to Southern Railway stations; there are other scales in effect in the State that are on a higher basis.

The carriers attempt to show that their scale is lower than the averageof the intrastate rates in Texas, Missouri, Oklahoma, Arkansas, and Louisiana west of the Mississippi River. The shippers * challenge the correctness of the Arkansas and certain of the Louisiana rates. It appears that the Royster scale is higher than the average of these intrastate rates, except for 180 miles and over and the shorter distances of 10 miles and under. The rates in Texas, Arkansas, and western Louisiana are, as a rule, lower than the proposed scale for distances of from 15 to 170 miles, and the rates in Missouri are lower in most cases, except for the shorter distances up to 40 miles. In Oklahoma, where a [fol. 37-10] higher basis is maintained, there was but one fertilizer manufacturing plant in 1924 and the estimated consumption amounted to but 3,000 tons.

* The term "shippers" as used in this report should be understood to include the agricultural, manufacturing, and other interests as distinguished from the carriers.

The intrastate rates of the States north of the Ohio River and of New York, Pennsylvania, Michigan, and Wisconsin were also exhibited to show the relative reasonableness of the Royster scale. These rates are, in many cases, the sixth-class rates. The Royster scale is lower than those shown, except in Illinois for distances over 50 miles. At 100 miles the Illinois scale is 39 cents under the Royster scale rate for that distance, and at 300 miles, 75 cents under. The record indicates, however, that in official territory fertilizer moves to quite an extent on specific commodity rates, and many of these, as well as the class rates, are blanketed over rather extensive groups.

The carriers cite many rates from various manufacturing points to destinations in official territory. They are far too numerous to set out in any detail but are generally higher than the Royster scale, and often substantially higher. The following examples are fairly representative:

	Distance, miles	Rate	Royster scale
From Baltimore, Md., to—			
Harpers Ferry, W. Va	80	$3.70	$2.25
Harrisburg, Pa	96	3.20	2.59
Martinsburg, W. Va	98	3.80	2.59
Cumberland, Md	176	4.70	3.27
Manunka Chunk, N. J	204	4.40	3.49
Grafton, W. Va	278	[1] 5.00	3.94
Ridgway, Pa	326	[2] 4.50	4.39
East Liverpool, Ohio	361	5.10	4.62
Cadiz, Ohio	403	6.40	4.95
Lockwood, Ohio	405	5.80	4.95
Meadville, Pa	429	5.10	[3] 5.40
Zanesville, Ohio	453	6.40	5.18
Port Henry, New York	453	6.00	[3] 5.52
From Philadelphia, Pa., to—			
Læsile, Md	50	2.60	1.80
Aberdeen, Md	65	3.10	2.03
Lansdowne, Md	103	3.20	2.59
Martinsburg, W. Va	106	4.40	3.38
Green Springs, W. Va	260	5.00	3.83
Cumberland, Md	272	5.00	3.94
From Syracuse, N. Y., to—			
Geneva, N. Y	51	2.30	1.92
Fonda, N. Y.	104	2.90	2.59
Albany, N. Y	158	3.20	3.15
Germantown, N. Y	196	3.80	3.38
Peekskill, N. Y	249	4.30	3.72

[1] This rate is blanketed from Keyser, W. Va., 199 miles, to Long Run, W. Va., 319 miles.

[2] This rate is blanketed over the entire Renovo division of the Pennsylvania from Renovo, Pa., to Erie Pa., involving hauls of from 249 to 445 miles.

[3] Joint-line rates.

Supplementing the above, the carriers cite a number of decisions in which we have said, in substance, that more favorable transportation conditions and greater traffic density north of the Ohio River warrant a lower level of rates in that territory than in the South.[1]

[1] Sugar Cases of 1922, 81 I. C. C. 448, 469-470; Commercial Club of Carrollton v. Director General, 55 I. C. C. 697, 700; and others.

[fol. 37-11] The shippers combat this showing by exhibiting the fertilizer rates that were in effect in the North prior to the 5 per cent increase, as compared with the rates prescribed in the Royster case, to show that the respective levels were as of that period about the same, and that in many cases the rates in the North were the lower. The shippers further show that many of the rates on fertilizer materials in official territory are lower at the present time than the Royster scale, and particular attention is directed to the rates on acid phosphate, this being frequently used as a complete fertilizer in northern territory. The rates on these materials are blanketed over long distances: For example, the rate from Baltimore of $4.60 on nitrate of soda applies for distances of from 217 to 421 miles, and the rate of $3.20 on acid phosphate from Baltimore to destinations in trunkline territory applies for distances of from 146 to 433 miles. The joint-line rates in this territory are on the same level as the single-line rates. Under the Royster scale the rates for these distances are as follows:

146 miles	$2.93	$3.27
217 miles	3.49	3.83
421 miles	5.07	5.40
433 miles	5.07	5.40

It will be seen from the foregoing that the joint-line Royster scale rate of $5.40 for 433 miles exceeds the rate on acid phosphate in trunk-line territory for a similar distance by $2.20. The shippers do not contend that the general level of fertilizer rates in the North is at present lower than the Royster scale, but concede the reverse to be true. They urge, however, that this has been brought about by the greater aggregate general increase allowed in official territory, beginning with the 5 per cent increase in 1915, and that the relatively high level of fertilizer rates in that territory may also be accounted for by the comparative unimportance of the traffic in the past. In Ohio, Indiana, Illinois, and Michigan only 379,000 tons were consumed in 1909. However, the use of fertilizer in central territory has been increasing, so that in the States named 655,000 tons were consumed in 1924. There is also pending a complaint, No. 15912, filed by the Ohio Farm Bureau Federation, seek-

ing 80 per cent of sixth class as the basis for rates on fertilizer in central territory, and a similar complaint, No. 16494, filed by the National Fertilizer Association, seeking 75 per cent of sixth class as the basis between points in central territory and between that territory and trunk-line territory. The former basis results in rates somewhat [fol. 37-12] higher than the Royster scale for 90 miles and under, and lower for other distances. At 100 miles the Royster scale rate is $2.59, while 80 per cent of the sixth-class rate in central territory for that distance is $2.40. Counsel for the carriers sought to develop why, if 80 per cent of sixth class is deemed proper in central territory, that basis should not also be used in the southern territory. It appears that sixth class is relatively a much lower class in central than in southern territory, and that the class rates are better adapted in the former than in the latter to the movement of carload traffic in volume. Southern Class Rate Investigation, 100 I. C. C. 513, 109 I. C. C. 300.

Numerous comparisons were submitted by the carriers contrasting fertilizer rates in Tenessee with the Royster scale. The latter are lower in some cases, but higher in most. The increases would occur mainly in the rates reduced under our findings in Rates to, from, and between Points South of the Ohio River, 64 I. C. C. 306, decided November 15, 1921, hereinafter called I. and S. 1303. As compared with the rates in effect prior to that revision the proposed scale would largely result in reductions rather than increases. In the case of rates from Memphis and the Ohio River crossings to Mississippi Valley points the proposed rates are, in most cases, considerably higher than the present rates which resulted from I. and S. 1303, but the carriers contend that the rates in that proceeding were not prescribed as reasonable maximum rates but primarily to remove fourth-section departures. Attention is directed to statements to that effect in Jackson Paper Co. v. A. & V. Ry. Co., 87 I. C. C. 529; St. Louis Merchants Exchange v. A. & R. R. R. Co., 87 I. C. C. 547, and other cases. In I. and S. 1303 a base rate of $5.80 was prescribed on fertilizer from St. Louis, Mo., and Louisville, Ky., to New Orleans as a maximum, the rate to-day being $5.20. The distance to

New Orleans from St. Louis is 698 miles, and from Louisville 747 miles.

The carriers exhibited many rates east of the Mississippi River, principally in southern territory, in effect on various commodities, for the purpose of showing that the revenues per car and per car-mile are in almost every instance higher than on fertilizer under the proposed rates, based on the average loading. These comparisons include rates on coal, cement, crushed stone, slag, scrap iron, asphaltum, blackstrap molasses, sulphuric acid, roofing slate, salt petroleum, manufactured iron, asphalt rock, lumber, wall plaster, and pig iron. Not only are the rates shown in many cases higher than the Royster scale, but on every commodity but two, coal and crushed stone, the car-mile earnings are greater. And even on coal and crushed stone, the earnings are, in the majority of cases, higher than under the Royster scale. In the following tables are shown what are [fol. 37-13] believed to be representative rates on three of the commodities mentioned for distances of approximately 50, 100, 150, and 200 miles. The Royster scale rates shown are for single-line hauls, except where referenced "J" to indicate joint line service:

Coal from—	To—	Distance	Rate	Car-mile revenue[1]	Royster scale	Car-mile revenue[1]
Jellico, Tenn	East Bernstadt, Ky	50	$1.13	109	$1.80	87
Birmingham, Ala.	Tuscaloosa, Ala	55	1.19	104	1.92	85
Do	Bluffton, Ala	104	1.35	62	2.59	60
Western Kentucky	Madison, Tenn	104	1.35	62	2.59	63
Birmingham, Ala.	Columbus, Ga	157	1.92	62	3.15	42
Glen Mary, Tenn.	Asheville, N. C	199	2.54	62	(*x*) 3.72	46
Clifty, Tenn.	Tenessee City, Tenn	198	2.03	45	3.38	42

[1] The car-mile earnings on coal are based on average loadings of from 44.4 to 51 tons, and those on fertilizer of from 21 to 24.5 tons.

Cement	Distance	Rate	Car-mile revenue	Royster scale	Car-mile revenue
C. F. A. rates [1]	50	$1.60	[2] 128	$1.80	[3] 83
North Carolina intrastate scale	50	2.00	[4] 144	1.80	[3] 83
Do	100	2.60	[4] 94	2.59	[3] 60
C. F. A. rates [1]	100	1.90	[3] 76	2.59	[3] 60
Norfolk, Va., to Tarboro, N. C.	100	2.70	[3] 72	2.59	[5] 54
Norfolk, Va., to Kingston, N. C.	149	3.20	[3] 58	2.93	[5] 41
North Carolina Intrastate scale	150	2.80	[4] 67	2.93	[3] 45
C. F. A. rates [1]	150	2.30	[3] 61	2.93	[3] 45
C. F. A. rates [1]	200	2.50	[3] 50	3.38	[3] 39
North Carolina intrastate scale	200	3.00	[4] 54	3.38	[3] 39

[1] Prescribed in Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 1, from St Louis and Hannibal, Mo., to points in Illinois, from Hannibal to points in Indiana, and from Buffington, Ind., to points in Illinois.

[2] Based on average loading of 40 tons.
[3] Based on average loading of 23 tons.
[4] Based on average loading of 36 tons.
[5] Based on average loading of 26.9 tons.
[6] Based on average loading of 21 tons.

Sulphuric acid from—	To—	Distance	Rate	Car-mile revenue	Royster scale	Car-mile revenue[1]
Copper Hill, Tenn.	Andrews, N. C	51	$2.45	231	(J)$2.14	97
Do	Marietta, Ga	96	2.50	125	2.59	62
Do	Knoxville, Tenn	107	2.10	94	2.59	56
Do	Rome, Ga	152	2.50	79	(J) 3.38	51
Do	Macon, Ga	205	3.10	73	(J) 3.72	42
Grasselli, Ala.	Hampton, Ga	206	3.49	81	(J) 3.72	42

[1] The car-mile earnings on sulphuric acid are based on an average loading of 48 tons, and those on fertilizer on an average loading of 23 tons.

In connection with the rates on sulphuric acid the carriers direct attention to the statement made in International Agricultural Corporation v. L. N. R. R. Co., 22 I. C. C. 488, 493, as follows:

As a result of the discussion the carriers seem finally to have taken the position that rates on sulphuric acid should be substantially the same as the fertilizer rate, upon the theory, apparently, that the completed fertilizer comes into competition with the acid.
[fol. 37-14] To this idea we can not subscribe. So as the case shows, fertilizer does not compete with sulphuric acid nor is it manufactured at the point where this acid originates. The value of the fertilizer distributed throughout the south is from $15 to $20 per ton at the plant. The value of this sulphuric acid is $5 per ton at the point of origin. It is strictly a raw material and we think that distinctly lower rates should be applied for the transportation of these commodities from the point of origin to point where they are finally used than that upon the manufactured fertilizer.

It will be observed that most of the commodities with which comparisons were made load much heavier than does fertilizer, and that ton-mile earnings were not shown. Both ton-mile and car-mile earnings are significant and entitled to consideration in rate comparisons. Moreover the proposed rates are to apply, not only to fertilizers, but to fertilizer materials, many of which load quite heavily. A witness for the shippers testified that he had found, upon investigation, that shipments of materials to fertilizer plants averaged about 35 tons per car.

The carriers direct attention to the seasonal character of the fertilizer movements, practically 50 per cent of the yearly tonnage moving in March and April, which they assert is one of the most active traffic periods in southern territory. Because of this concentration they contend that the expense of handling the traffic is greater than it would otherwise be. In this connection the carriers say that at the more important manufacturing points it is necessary, at the beginning of the season, to assemble a considerable number of empty cars in anticipation of the movement. At Charleston, where there are 14 plants, some 600 cars are accumulated at the opening of the shipping season, and as many

as 300 to 400 are kept on hand while the demand continues. A study made at that point from December, 1923, to April, 1924, inclusive, showed the average detention to be seven days per car. The expense of switching to and from the plants is said to be heavy, and attention is directed to the showing made by the carriers in South Carolina Fares and Charges, 60 I. C. C. 290, 301, to the effect that this expense at Charleston approximated $5.94 per car. These conditions seem to obtain principally at Charleston and Savannah, Ga., and to some extent at Norfolk, Va., and a few interior points, but the testimony was largely confined to Charleston. The shippers contend that the fertilizer movement occurs at a time when other traffic is not heavy and when there is to some extent a surplus of equipment. While the testimony does not support a finding that there is any dearth of other traffic during the fertilizer movement, neither does there appear to be a peak movement of any other commodity.

Some testimony was offered by the carriers with respect to the contaminating effect which mixed fertilizer has on [fol. 37-15] the cars in which it is transported. They contend that because of the odor many commodities can not be loaded in cars that have been used for fertilizer until some time has elapsed and the cars have been cleaned. Tobacco and sugar are particularly susceptible to contamination, and grain and other commodities have at times been damaged. Just how serious this feature is in actual practice is not satisfactorily disclosed. The carriers emphasize and the shippers minimize its importance. The latter mention the many commodities that would not be affected, and assert that for the most part the materials have little or no offensive odor. However, it was stated by one of the shippers' own witnesses that about 70 per cent of mixed fertilizer contains tankage or fish scrap or both and has a decided odor.

The Shippers' Proposal

The shippers' case was presented largely by representatives of manufacturing organizations, members of the National Fertilizer Association. The Alabama Public Service Commission also took an active and important part in support of the rates proposed. Testimony was of-

fered on behalf of the Kentucky Railroad Commission, a statement was made by one of the North Carolina commissioners, and helpful cross-examination was conducted by representatives of the Florida, Georgia, and Mississippi commissions. The shippers are at one with the carriers in urging uniformity in the rates; the predominant issue is with respect to their level. The shippers contend that we discard the Royster scale in Blackshear Mfg. Co. v. A. C. L. R. R. Co., 87 I. C. C. 654, involving rates on fertilizer from Blackshear, Ga., to points in Florida, where we said at page 662:

> The cases * * * in which the Royster scale was prescribed or approved were decided on the records then before us and solely for the purpose of disposing of the very narrow issues which those cases presented. It does not follow that the same scale should be accepted as the final measure of rates to be applied generally throughout the Southeast or that the rates from Georgia to southern Florida should be constructed by superimposing upon that scale an increase to reflect the less favorable transportation conditions in southern Florida.

Attention is also directed to this further statement, at page 663 of that report:

> It has been generally recognized for years that transportation conditions in the Southeast do not warrant any higher basis of rates than in the Southwest, and rates in the Southeast are in many cases lower than in the Southwest. The 9702 [Memphis Southwestern Investigation, 77 I. C. C. 473] fertilizer scale was prescribed or approved in a comprehensive proceeding for application, intrastate and interstate, in Arkansas and between Arkansas, southern Missouri, and western Louisiana, and presents a fairer guide for determining maximum rates on fertilizer from Blackshear to Florida points than does the Royster scale [fol. 37-16] which was originally prescribed for traffic moving between a comparatively few points in the Southeast.

These statements, it is urged, warranted the Alabama commission, when it had the matter of fertilizer rates before it in 1924, in accepting the scale prescribed in No.

9702 as representing reasonable maximum rates in southwestern territory, and in finding that a scale somewhat lower might appropriately be adopted east of the Mississippi River. The greater volume of fertilizer tonnage in Alabama was also given consideration. The Alabama commission accordingly prescribed rates which averaged 87.3 per cent of the single-line rates and 89.1 per cent of the joint line rates in No. 9702. But instead of adopting the minimum weight of 15 tons prescribed in that case on mixed fertilizer, the Alabama commission, because of the average loading in that State, adopted a minimum of 20 tons. Wherever the minimum on materials was less than 40,000 pounds it was increased to that weight, except in the case of cottonseed hulls where it was continued at 15 tons. The rates and the minimum weight which the shippers now propose are the same as, or based on, those prescribed by the Alabama commission and for representative distances are as follows:

	Single line			Joint lines		
	Shippers' proposed rate	Revenue per ton-mile	Revenue per car-mile[1]	Shippers' proposed rate	Revenue per ton-mile	Revenue per car-mile[1]
	Cents	Cents	Cents	Cents	Cents	Cents
5 miles	80	16	320	....	....	....
10 miles	90	9	180	120	12	240
25 miles	120	4.8	96	120	6	120
50 miles	145	2.9	58	175	3.5	70
75 miles	170	2.27	45.3	200	2.67	53.3
100 miles	195	1.95	39	225	2.25	45
150 miles	245	1.63	32.7	275	1.83	36.7
200 miles	295	1.48	29.5	315	1.58	31.5
250 miles	345	1.38	27.6	365	1.46	29.2
300 miles	375	1.25	25	395	1.32	26.3
400 miles	425	1.06	21.3	435	1.09	21.8
500 miles	475	.95	19	485	.97	19.4
600 miles	515	.86	17.2	515	.86	17.2
700 miles	555	.79	15.9	555	.79	15.9
800 miles	595	.74	14.9	595	.74	14.9
900 miles	615	.68	13.7	615	.68	13.7
1,000 miles	635	.64	12.7	635	.64	12.7

[1]Based on minimum carload weight of 40,000 pounds.

The scale is shown in its entirety in Appendix C and for convenient reference the No. 9702 scale is also shown.

While the shippers advocate strict adherence in general to their distance scale, they favor certain exceptions. Thus they believe that the various fertilizer plants in and around

Atlanta should be grouped, average distances from the group to be used in fixing the rates, and that similar situations should be similarly treated. Neither do they be- {fol. 37-17} lieve that the scale should be applied on certain materials. For example, sulphate of ammonia is produced in southern territory only in the Birmingham district, and they suggest that rates on this commodity be competitively adjusted with rates from the northern steel mills.

One of the shippers' principal witnesses admitted that the rates which they propose are, with the exception of rates within Mississippi and for short distances in Georgia, lower than any existing fertilizer rates in southern territory that have been prescribed either by us or by State commissions. The low basis of rates in Mississippi is due, the carriers say, to two causes: (1) Two extremely low rates originally established by the carriers operating in that section to encourage agricultural development, and (2) to orders or suggestions of the Mississippi commission. Attention is called to the fact that for more than 25 years the only changes in the Mississippi fertilizer rates have been those occasioned by the general increases or reductions.

Many individual instances are shown by a witness for the Alabama commission where the shippers scale will result in increased rates. These include rates from the principal points in Georgia and from Chattanooga, Tenn., to destinations in Alabama, and from Nashville and Memphis, Tenn., to destinations in both Alabama and Georgia. Out of 69 rates shown from Atlanta, 41 would be increased and 27 reduced. Out of 74 rates from Nashville, 49 would be increased and 23 reduced. On the other hand, out of 62 rates shown from Athens, Ga., only 14 would be increased while 48 would be reduced. Taking the showing as a whole, it appears that of over 700 rates exhibited 46 per cent would be increased in amounts ranging from trifling sums to as high as $1.30. Similar data were submitted by other witnesses. While the shippers' exhibits show many specific rates that are higher than their scales, the attempt seems to have been only to prove that there are a goodly number of cases where rates are maintained on a lower basis than they are proposing, not that the general level is lower. Rates from St. Louis, Memphis,

and Nashville to points in Mississippi and to New Orleans and Mobile, established as a result of I. and S. 1303, are also compared with the shippers' scale. The rates shown from St. Louis and Nashville are in all but two instances lower than the scale, but the latter is lower in most cases than the rates from Memphis.

The shippers further compare their scale with the rates on various commodities. Those on cabbage and potatoes, petroleum, cotton piece goods, and iron and steel articles are in general materially higher than the scale. The rates on livestock between points in North Carolina are [fol. 37-18] slightly higher, as are also the rates on cement within Georgia and Alabama. Rates lower than the scale are shown to be in effect on cement from Birmingham to interstate destinations; on lumber from Georgia points to Birmingham and Chattanooga, and from Alabama points to Atlanta, Chattanooga, Memphis, and Nashville; on coal from Dante, Va., to Carolina territory and from Jellico, Tenn., to southern points generally; on sand and gravel over various lines; and on brick from Chattanooga to Georgia points. The rates on lumber are, in many cases, not only lower than the scale, but, based on the carload minima, produce lower car-mile earnings. As in the case of similar comparisons offered by the carriers, the shippers' showing is not any way decisive. It merely goes to prove that there are rates on various commodities that are both higher and lower than the scales here proposed. The shippers admit, and in fact urge, that such comparisons are not entitled to great weight.

The carriers contend that the Alabama scale, the basis of the shippers' proposed rates, is unduly low and was influenced by intrastate rates fixed by the Georgia commission. In 1907 the Alabama Legislature passed a statute which, it is said, prescribed the same distance scale of rates on fertilizer as was then in effect in Georgia. This action, the carriers say, was taken without any public hearing and resulted in substantial reductions. The scale so prescribed, subject to the subsequent general rate changes, remained in effect until July 25, 1924, when the Alabama commission promulgated the present intrastate scale, resulting in a further average reduction of about 7 per cent.

The answer of the shippers to the contention that the present Alabama scale was derived from admittedly low Georgia rates has already been indicated. It is in substance that the Alabama commission took as its guide, not Georgia rates, but the No. 9702 scale prescribed by us for application in the Southwest. It is shown that in the Blackshear case we, ourselves, prescribed the No. 9702 rates from Blackshear to points in Florida on and north of the Jacksonville-River Junction line for distances up to 240 miles, and that even to points 155 miles south of Jacksonville the rates were made but 10 cents higher than that scale. It must be admitted, the shippers say, that transportation conditions from southern Georgia into Florida are much less favorable than within Alabama, and the above distance of 240 miles well exceeds the average haul in the latter State.

As the position of the shippers is understood, not so much stress is laid on rate comparisons to sustain their [fol. 37-19] scale as on the economic advantages accruing through the use of fertilizer, and the absolute need for its use if southern agriculture is to be at all successful.

The vice president of the American Farm Bureau Federation stated that organization's position as follows:

We * * * respectfully ask the Commission to take into account the fact that in its work of gradually remaking the freight rate structure in the country the Commission should give a fair regard to the peculiar uses of different articles and so distribute the total transportation burden as will impose a fair relative part upon agriculture. In other words, in considering the proper disposition of this case involving as it does an article of direct importance in agriculture we urge the Commission to find from the evidence the extent to which sound national economy would justify the making of as low rates as consistently can be done on this particular article.

From the foregoing it is not to be understood that the shippers are urging the financial necessities of the southern farmers. Counsel states upon brief that our conclusion need not——

depend on any thought that Southern agriculture is undertaking to secure or expects a subsidy in the way of lower

transportation charges upon fertilizer than would otherwise be warranted by sound consideration of economics and logical rate making.

While the condition of agriculture is not stressed as a ground for the special treatment of fertilizer rates, it is nevertheless of interest to note the testimony offered by the agricultural statistician of the Alabama extension service, who is also connected with the Federal Government. This witness testified that in 1924 the farmers of Alabama lacked $34,000,000 of receiving the full wage rate paid to farm workers, or about $130 per farm. In Georgia the farmers lacked $112,000,000, or about $350 per farm. In contrast the farmers of Texas and Oklahoma not only received the full wage rate but a profit besides, amounting to $81,000,000 in the farmer State and to $84,000,000 in the latter. In those States it appears that the soil now requires little or no fertilization; and it was the view of this witness that if the southeastern farmer expects to compete successfully with cotton raisers in Texas and Oklahoma it will be necessary for him to increase his yield per acre substantially, which can be done in not better way than by greater use of comemrcial fertilzers. It is his belief that around 4,000,000 tons of fertilizer could be profitably used in Alabama alone, provided it could be bought at a reasonable price, instead of the 580,000 tons used in 1925. In this connection the shippers contend that since the item of labor is comparatively small in the manufacture of fertilizer, it is chiefly the combined cost of transportation, raw materials, and selling which controls the prices.

The carriers minimize the importance of the freight charges so far as the farmer is concerned. They state, first, that the credit price of fertilizer exceeds the cash [fol. 37-20] price by from 25 to 33⅓ per cent, and that many of the smaller farmers purchase on the credit plan. They point out, further, that the average price of fertilizer in southern terirtory for 1925 exceeded that for 1924 by nearly $4 a ton, resulting in an aggregate increase in price, based on total consumption, of nearly $18,000,000. Yet, regardless of this price increase, the consumption on the cotton in 1925 exceeded that in 1924 by over 200,000 tons. It is the carriers' position that any thinkable cut in freight

rates would amount to so little per farm that it would have no effect either upon the use of fertilizer or upon the farmers' prosperity. Assuming that the shippers' scale were adopted instead of the carriers,' resulting in a rate for a 100-mile haul 64 cents lower, on a farm of 100 acres using 345 pounds of fertilizer per acre, the average in South Carolina in 1924, the lower rate would effect a total saving of $11.04. This figure does not, however, take into consideration any reduction in the price of fertilizer which the lower basis of inbound rates on materials might have a tendency to bring about. The carriers direct attention to the testimony of the vice president of the American Farm Bureau Federation that—

> * * * no effort is here being made to say that the volume of fertilizer to be consumed would be greatly more or less, dependent upon the measure of freight rate levels which will result from this proceeding.

The carriers further urge that even if the freight rates were reduced, little or no benefit would reach the farmer. This view has considerable support, somewhat negative in character, in the record. There is at least little to show that the course of fertilizer prices to the farmer has in the past been materially influenced by changes in freight rates. It appears that the delivered price of fertilizer at any interior point is determined by the f. o. b. price at the nearest port plus the freight rate thence to the particular destination. Freight rates are thus a factor in the prices paid by the farmers, but any reductions in those rates might and, the carriers contend, would be offset by changes in the f. o. b. port prices.

The carriers state, likewise with considerable support of record, that the price of crops for the preceding season is the controlling factor in determining the amount of fertilizer used in any year; that when the price of cotton, for example, is high the farmer uses more fertilizer the next year, and that when there is a crop failure or a low price is received he uses less. This is admitted by the agricultural statistician of the Alabama extension service to be an important factor in determining fertilizer consumption.

In rebuttal of the contention that the farmer will not benefit from a freight-rate reduction, shippers state that farm organizations are gradually springing up throughout

[fol. 37-21] the South, and that through cooperative buying, which these organizations made possible, the farmer not only obtains his fertilizer at a lower price but would in most cases secure directly the benefit of any reduction in the delivery charges. It was testified that the Alabama Farm Bureau Federation purchased and distributed to its members in the spring of 1925 approximately 81,000 tons of fertilizer of all kinds. Most of this tonnage consisted of fertilizer materials which the farmers themselves mixed, a practice resulting in considerable economy.

Carload Minimum Weight

As already stated, the shippers propose in connection with their scale a carload minimum of 20 tons instead of the 15 tons proposed by the carriers. It is understood that their proposal includes also increasing the minimum of all materials, where now lower, to this weight, with the exception of cottonseed hulls. This increase in minimum, they urge, should be taken into consideration in fixing the rate level. The higher minimum is now applicable on intrastate traffic in Alabama, and it has the approval of the vice president of the American Farm Bureau Federation.

Attention is directed to the fact that at the time the 15-ton minimum was adopted in the Royster case the average loading was but 17 tons, while at the present time it is considerably in excess of that figure. In March, 1925, the average loading of mixed fertilizers from 18 of the principal manufacturing points in the South ranged from approximately 21 to 29 tons. An analysis of these figures shows that out of a total of 3,934 cars, 1,087 loaded below 20 tons and the balance above, although in most of the South the minimum is now 15 tons and in some cases as low as 10 tons. By the carriers' own showing the average loading in 1923-1920 on Class I roads in southern territory was a little over 23 tons. Based on the increase of 6 tons over the average loading in 1913 it is estimated that is required 61,000 less cars in 1925 to transport the 4,000,000 tons of fertilizer consumed in the South in that year than it would have required if the average loading had remained as in 1913. The loading seems to be limited

chiefly by commercial needs and conditions. It was testified that it is physically possible, although perhaps not feasible, to load to the full capacity of the car.

The carriers question the wisdom of increasing the minimum. They seem to fear that many farmers will object and that considerable discontent will result. Aside from the carriers, the only specific objections of record to a 20-ton minimum came from three manufacturers in Florida and from a farmer of Sumter, S. C., who stated that the users in his section object to a greater minimum [fol. 37-22] than 15 tons. This objection is apparently based on possible difficulty in getting a sufficient number of individuals to combine to order the larger carload.

The increase in minimum, so far as fertilizer materials are concerned, would apparently cause little change in trade practices. The minima proposed for materials by the carriers, which are those carried in the current consolidated classification, are in many instances 20 tons or higher, and the average loading of materials is said to be around 35 tons. The principal materials, such as sulphate of ammonia, dried blood, cottonseed meal, acid phosphate, potash salts, and tankage, now have a 20-ton minimum. Nitrate of soda is also accorded a minimum of 40,000 pounds in the classification, but it is stated that there is a considerable import movement from the south Atlantic ports to South Carolina destinations on a minimum of 10 tons, and that there is some movement of materials on this basis between other points in the same general section.

It would seem that the time has come when an increase in the carload minimum on fertilizers may properly be made. The record contains no pronounced objection to the higher minimum, and the attitude of the shippers is, in general, favorable. The 20-ton minimum, if adopted in Florida, might, at first, cause some inconvenience. Any-quantity rates are now in effect on intrastate shipments of mixed fertilizer in that State, and it is possible that some little time might be required for the users to accommodate themselves to the carload basis. A manufacturer at Orlando, Fla., gave it as his opinion that a 20-ton minimum would work a hardship on many small truck growers who would be unable to use that amount.

In the Blackshear case, supra, involving rates into Florida, a minimum of 30,000 pounds was prescribed, and no complaint on that score has come to our attention. There seems to be a willingness in that State to adopt on mixed fertilizer at least that carload minimum, and a minimum of 20 tons on materials.

While referring to the Florida adjustment it should be said that the rates on materials within that State are on the basis of 75 per cent of the fertilizer rates. The relationship was fixed by the Florida commission in order that manufacturers at inland points might more readily compete with plants at the port, and it is urged that any decrease in the spread would be likely to force the interior manufacturers out of business. The intrastate situation in Florida is not directly involved in this proceeding. Except on certain materials within North Carolina which, subject to a 25-ton minimum, are accorded rates 90 per cent of those on fertilizer, and except on kainit and acid phosphate within Georgia, which have a like concession, no other situation is brought to our attention where the materials are granted rates lower than apply on fertilizer. [fol. 37-23] A representative of the Florida East Coast urged a higher basis of rates in connection with traffic into Florida than for the rest of southern territory, and also sought for his road rates somewhat higher than on other lines. He submitted no specific proposal, other than that interstate rates to points on his lines should be maintained on tthe basis of the combination over Jacksonville, Fla. The record does not warrant special treatment of interstate shipments of fertilizer or fertilizer materials to and from Florida points.

Proposal of the Short Lines

The American Short Line Railroad Association, on behalf of its southeastern members,* seeks a special basis of rates for these short lines because of their poor financial condition and limited traffic resources. The general basis of interstate rates on fertilizer to points on these lines is now the full combination over the trunkline junction point.

* See Appendix D for a list of the lines referred to in the record.

Intrastate rates are made, as a rule, on the combination basis less certain percentages, which vary in the different States. In Georgia the full combination obtains. In Alabama, on the other hand, joint rates between trunk-line and short-line points are made 10 per cent higher than the joint trunk-line scale. The local short-line rates in that State are 20 per cent higher than the rates of the standard lines, and for joint short-line hauls the same differentials are added as obtain between the single and joint standard-line rates. This Alabama adjustment is the one which the shippers propose for general application.

The short lines seek approval of the full combination basis, but in any event not less than the Royster scale, single line or joint line, as the case may be, plus an arbitrary of 50 cents, this arbitrary to accrue solely to the participating short-line carrier.

There are other roads, not members of the Short Line Association or individually represented, which likewise seek special treatment. These are:

1. The Columbus & Greenville, 167 miles long, extending from Columbus to Greenville, Miss. It desires to maintain the full combination basis, with local rates not less than the Royster scale.

2. The Gulf, Mobile & Northern and its subsidiary, the Birmingham & Northwestern, the former extending from Mobile, Ala., northerly through Mississippi to Jackson, Miss., 408 miles, and the latter extending from Jackson to Dyersburg, Tenn., 48 miles. These roads desire to maintain rates to their local stations made 50 cents higher than the scale adopted for general application.

[fol. 37-24] 3. The Alabama, Tennessee & Northern, extending from Calvert, Ala., northward to Reform, Ala., 186 miles, and its subsidiary, the Alabama & North Western, extending from Pine Hill, Ala., to Coxheath, Ala., 24 miles. These roads likewise ask for an arbitrary of 50 cents over the Royster scale.

4. The Atlanta, Birmingham & Atlantic, extending from Brunswick, Ga., to Birmingham, Ala., and which, with its branch lines to Atlanta, Thomasville, and Waycross, Ga., is 640 miles long. This carrier does not now contemplate

higher rates over its line than may be prescribed as the standard scale, but it seeks the right to carry higher rates if it finds it necessary in the conduct of its business.

5. The Norfolk Southern, the main line of which extends from Norfolk, Va., to Charlotte, N. C., 400 miles. Of its total main-line and branch-line mileage of 932 miles, 115 miles are in Virginia and the balance in North Carolina. This carrier seeks rates made 10 per cent higher than the Royster scale for single-line traffic, with the same differentials for joint-line traffic as are proposed by the carriers for general application.

6. The Carolina and the Kinston-Carolina, the former extending from its connection with the Norfolk Southern at Kinston, N. C., northward to Snow Hill, N. C., 15 miles, and the latter extending from the same junction point southward to Beulaville, N. C., 28 miles. The rates of these lines were fixed by the North Carolina commission approximately 50 per cent higher than the Royster scale, and they desire to continue this basis, with joint-line rates made full combination over their junction with the Norfolk Southern.

Any detailed discussion of the situation with respect to the Association lines seems unnecessary. It has received consideration in other cases, including Southern Class Rate Investigation, supra, where, except in a few instances, the necessities of these short lines were recognized. They have been accorded special treatment by most of the States and, in general, the shippers seem to favor such treatment. In 1924, according to an exhibit filed by their representative, many of these carriers had a deficit in net railway operating income and comparatively few had good earnings.

Of the Association lines it appears that the Tampa & Gulf Coast is controlled by the Seaboard Air Line and that its earning in 1924, as the result of its being a part of a through route, approximated 10 per cent of the book value of its property; that the East & West Coast, the Florida Central & Gulf, and Tampa & Northern are likewise subsidiaries of the Seaboard and participate in continuous-distance rates in connection with that carrier; and that the Live Oak, Perry & Gulf is controlled through stock owner-

ship by the Atlantic Coast Line and has had excellent earn-
[fol. 37-25] ings. These five lines were refused special treatment in the Southern Class Rate Investigation, supra.

Little evidence was submitted with respect to the financial needs of the Alabama, Tennessee & Northern. It asserts that it operated at a deficit in 1924, but the Alabama commission contends that, if its accounts had been kept in accordance with our regulations, its earnings would have been shown to be at least 5.75 per cent of the tentative value which we have assigned to its property. This is disputed by the carrier.

The Atlanta, Birmingham & Atlantic is now in the hands of a receiver, and its net railway operating income in 1924 was $263,829. After deducting interest on funded debt and other nonoperating expenses, it showed a deficit of $244,901 for that year. This carrier was accorded special treatment in the Southern Class Rate Investigation, so long as it "remains independent of standard-line control," 109 I. C. C. 300, 309. An application of the Atlantic Coast Line for authority to acquire control of this carrier is now pending.

The Norfolk Southern now enjoys rates somewhat higher than the Royster scale on intrastate traffic in Virginia, in North Carolina for the shorter distances, and on certain interstate traffic unaffected by our findings in the Royster case. It was shown that for the years 1920 to 1924, both inclusive, its average operating ratio was 82.5 per cent, that its net railway operating income averaged $802,942, and that the average return on its total investment of over $35,000,000 was 2.24 per cent. Its net railway operating income per mile of line for 1923 was $1,468 as compared with $3,374, the average for the entire southern region. No one opposed a higher basis of rates for this carrier than that accorded the standard lines.

The Carolina and the Kinston Carolina are controlled through stock ownership by the Norfolk Southern, but it was testified that they had never been operated as an integral part of the latter company and that their operating officers are not the same.

The Columbus & Greenville and the Gulf, Mobile & Northern, together with its subsidiary, the Birmingham & Northwestern, submitted evidence showing that their earnings have not been favorable.

Before discussing the section 13 cases brought against the intrastate rates in Alabama, Georgia, and South Carolina, and certain exceptions to the general adjustment, it seems desirable to reach a conclusion as to the proper level of rates for general application in southern territory. In this connection a review of the traffic test is essential.

The Traffic Test

This test was made by the carriers at our request for the purpose of determining as nearly as possible the effect [fol. 37-26] upon their revenues, not only of the Royster scale, but of the shippers' scale as well. The months of March and April, 1925, were selected for the test throughout the territory, except in Florida, where February was taken. These months, it was believed, cover the height of the fertilizer movement in the respective sections, and embrace practically 50 per cent of the total movement for the year. The actual figures of the test, as shown below, should be doubled to arrive at approximate results on a yearly basis. The figures cover not only mixed fertilizers but fertilizer materials both domestic and imported. The movement of imported materials during the test period amounted to about 12.5 per cent of the total tonnage.

It is shown that of the total tonnage of fertilizer and materials, amounting to 3,189,819, tons, 70 per cent moved for distances of 150 miles and less. Of the single-line traffic, one-half moved for distances of 85 miles and less, and one-half of the joint-line traffic moved less than 140 miles. These figures bear out testimony of record. Thus it was testified that the average haul of fertilizers from the important manufacturing points in southern territory ranged from 40 miles from Hartsville, S. C., to 181 miles from Charleston, S. C. It is agreed that the average haul of materials substantially exceeds that of fertilizer. For example, it was shown that from 13 plants located at 10 points in Alabama the average outbound haul was 51 miles, while materials moved inbound to the same plants an average distance of 355 miles. The inbound hauls, of course, vary considerably, depending on the location of the plant with respect to the principal source of its raw materials.

The test showed that 2,154,422 tons, or 67 per cent of the total, moved single line, and 2,189,254 tons, or about 69 per

cent, moved intrastate. Of the total revenue of $7,947,908, almost 60 per cent, or $4,753,932, accrued on intrastate traffic.

The foregoing data do not take into consideration Florida traffic, either intrastate or interstate. As heretofore, indicated, the Florida intrastate rates on mixed fertilizer are on an any-quantity basis, and for the purpose of the traffic test all shipments which loaded 10,000 pounds or over were considered carload lots and so rated, the revenue being determined on the actual weight. Through this segregation 29,840 tons moving intrastate were rated as carload shipments and 5,070 tons as less than carloads. The traffic so rated as carload moved in 1,817 cars, averaging a little over 16 tons to the shipment. The interstate carload traffic amounted to 10,680 tons, or about 26 per cent of the total carload tonnage. The total revenue on the carload traffic was $122,586, of which $40,489, or one-third, accrued on interstate shipments.

[fol. 37-27] The test shows that for the period covered the Royster scale would result in an increase in revenue, exclusive of Florida, of $834,285, which on a yearly basis would amount to about $1,668,000. As applied to interstate traffic alone, the Royster scale would result in additional revenue of about $420,000 for the year, or approximately 25 per cent of the estimated total. The proposed rates applied to the Florida tonnage for the month of February showed an increase in revenue of $17,097. The record is not clear as to what percentage of a year's business this showing of one month represents, but it is probably safe to assume that it is less than one-half of what the result would be for a year. In view of the fact that the proposed rates approximate the present intrastate rates in Florida up to 170 miles, being in a number of cases even lower than the Florida scale, it is probable that a substantial amount of the increase shown in that State is due to the fact that the carriers' proposal places fertilizer materials on the same rate basis as fertilizer, the former now being accorded in Florida rates made 75 per cent of the latter. The carriers call attention to the showing made, that of the total increase exclusive of Florida, a little over one-fourth, or $210,729, would accrue on traffic delivered at destinations on the so-called short lines. Upon such traffic they added an arbitrary of 50 cents to the scale rates.

The carriers estimate roughly that the shippers' scale would result in a reduction in their revenues of not less than $636,146, or $1,272,000 on an annual basis. On brief, counsel for the Alabama commission, although admitting that some revenue reduction would be likely to occur under the shippers' scale, question the carriers' estimate. They point to the fact that the estimate includes $147,000 yearly loss to the Norfolk Southern. This carrier, it will be recalled, is asking for special treatment. It appears that 61 per cent of the total tonnage delivered by the Norfolk Southern during the test period consisted of North Carolina intrastate shipments, on which rates somewhat higher than the Royster scale now obtain. The Alabama commission does not oppose special treatment for this carrier, and on the assumption that it will be accorded concludes that the estimated reduction in revenue would not take place, or at least would be nominal, thus substantially diminishing the gross estimated reduction under the shippers' scale.

A factor which must be given weight in considering the estimated loss under the shippers' scale is the treatment to be accorded traffic moving over short lines, and over trunk lines and short lines jointly. In estimating the loss it is understood that the carriers applied to their traffic-test tonnage the basis for short lines proposed by the shippers, which would result in lower revenue on all single-line shipments up to 150 miles, and on all joint trunk-and-short-line [fol. 37-28] shipments up to 480 miles, than would accrue under the shippers' standard-line scales plus a short-line arbitrary of 50 cents. For example, it is shown that for the block of 111-120 miles, 34,000 tons of fertilizer moved in joint-line service in connection with short lines. Using the shippers' trunk-line scale for 120 miles, plus a short-line arbitrary of 50 cents, produces a rate 25 cents higher than the shippers' proposed joint scale for trunk and short lines. This would yield for this single mileage block about $17,000 more revenue per year than estimated.

The Rate Level for the Future

The salient points made by the carriers and shippers in support of their proposed scales are summarized below, with brief comments.

1. The carriers urge that their scale is the same as that which we finally approved, after consideration in three successive reports, in the Royster case and prescribed in certain subsequent cases. While this is true, we have in this proceeding a much more comprehensive record. It further appears that one of the reasons for approving, in the third Royster report, a lower scale than had been approved in the two previous reports was an increase in the carload minimum from 12 tons (10 tons in the first report) to 15 tons. The shippers are here proposing a minimum of 20 tons.

2. The carriers show that their scale is in general lower than the prevailing rates on fertilizer in official territory. Certain of the latter rates are now before us in pending proceedings. Without expressing an opinion as to their level, the record here shows that the volume of fertilizer movement is materially less in official than in southern territory. The rate structures of the two territories also differ radically. In official territory class rates are relatively low and commodity rates, in general, relatively high. The reverse is true in southern territory. Southern Class Rate Investigation, supra. Much of the fertilizer movement in official territory is on class rates, but apparently none of the movement in southern territory is now, or ever has been, on such rates.

3. The carriers show that their scale is lower than many existing interstate rates on fertilizer in southern territory, and they assert that such increases as it would bring about would be largely confined to intrastate traffic, the rates on which they say are unduly depressed. The relation of their scale to the present level of fertilizer rates in southern territory has been clearly indicated by the traffic test. That test showed that, exclusive of Florida traffic, aggregate revenues would be increased by the Royster scale about 10.5 per cent. The increase would be about 6.6 per cent on interstate traffic and about 13 per cent on intrastate. It appears, however, that increases in the case of interstate traffic would be chiefly in the territory west of the Appa-
[fol. 37-29] lachian Range and south of Kentucky.

4. The carriers show that their scale would produce lower car mile earnings, and in some cases rates lower in amount,

than many rates for similar distances in southern territory on commodities having values as low as or lower than the value of fertilizer. In general, the commodities selected for comparison load more heavily than fertilizer, and a comparison of ton-mile earnings would show reverse results. It is also a fact that the rate situation in southern territory with respect to a number of these commodities is such that quite divergent comparisons may be obtained, dependent upon the particular rates used.

5. The carriers contend that while the revenue from fertilizer traffic is a very important item in their aggregate revenues, so that they would be materially affected by any reduction in fertilizer rates, southern farmers would at best receive an inconsequential benefit from such a reduction and perhaps no benefit at all. It appears to be a fact that a reduction in the freight rates on fertilizer, even if quite substantial, would result in a comparatively small saving per farm, even if all the benefit should accrue to the farmer. If a similar reduction on materials inbound to the manufacturing plants were translated into lower fertilizer prices, the saving per farm would be greater, but apparently in no event would it be very large. Whether or not the benefit of a reduction in freight rates would accrue to the farmer would seem to depend upon the character and degree of competition in the fertilizer industry.

6. The carriers contend that a reduction in fertilizer rates would not stimulate the use of fertilizer, since statistics show that the use each year depends not upon the price but chiefly upon the farmers' income during the previous year. It is true that the record furnishes some support for this conclusion, but it is important to note that such evidence is also proof of the thing margin upon which the farmers operate. The benefits from liberal use of fertilizer in southern territory are conceded by all, but the maximum use is apparently by no means as liberal as it might well be, and in many years the financial condition of the farmers is such that they can afford only a use falling well below the maximum.

7. While the carriers admit the economic advantage accruing from the use of fertilizer, they contend that this fact is no more a reason for subnormal rates on this particular

commodity than it is, by way of illustration, for rates below a reasonable level on farm implements, which also are essential to successful agriculture. So far as the Hoch-Smith resolution is concerned, they contend that it has no application in this case, since the record does not justify a conclusion that the condition of the fertilizer industry [fol. 37-30] warrants a reduction, or that such a reduction is necessary to obtain freedom of movement for either fertilizer or agricultural products, or that it would be of material benefit in other ways to the farmer. The prescription of rates lower than they themselves propose would, the carriers further contend, be unlawful under section 1 of the interstate commerce act, and also under section 3 as an undue preference of a "particular description of traffic."

8. The shippers, like the carriers, contend that their proposed scale is supported by our previous decisions. They rely upon the scale which we prescribed for fertilizer traffic in southwestern territory in No. 9702 and upon that prescribed from such Georgia points into Florida in the Blackshear case. It is true that their scale was derived from these decisions by a logical process of reasoning, although certain of the premises, such as the assumed reasonable difference in level between southeastern and southwestern rates, were more or less arbitrary. However, the record in this proceeding is much more comprehensive, not only than that in the Royster case, but also than the record as to fertilizer traffic and rates in either of the proceedings above cited.

9. The shippers point out that the final decision in the Royster case was much less recent than the decisions in the cases upon which they rely, and that it was confined to Carolina territory. In that territory, they say, freight rates have been influenced by proximity to official territory, so that class rates have been in general somewhat lower than in other parts of southern territory and commodity rates in general somewhat higher. While the Royster scale prevails in Carolina territory, the shippers contend that their scale more nearly approximates the level of fertilizer rates, both interstate and intrastate, in the rest of southern territory. At present the highest level, they say,

exists in Carolina territory, the next highest in Kentucky-Tennessee territory, a lower level in Alabama-Georgia, and the lowest of all in the Mississippi Valley. In this connection they quote the following from the Southern Class Rate Inves-igation, 100 I. C. C. 513, 623:

A further argument advanced in favor of a concession in rates, in North Carolina at least, is the fact already mentioned that class rates in Carolina territory are now and for a long time have been relatively low compared with similar rates in other parts of southern territory. It is true that if class rates are placed upon a uniform basis in southern territory which will preserve existing revenues in the aggregate, North Carolina will lose where certain other States will gain. On the other hand, the evidence indicates that if a similar process is followed, as is probable, in the revisions of commodity rates in southern territory which are in contemplation, the results will be reversed.

The results of the traffic test tend to bear out the shippers' contentions in regard to the levels of existing fertilizer rates in the various parts of southern territory, although it also indicates that the shippers' proposed scale [fol. 37-31] falls about 8 per cent below the present average.

10. The shippers lay stress upon the increase in carload minimum which they propose from 15 tons to 20 tons. They note the incongruity that such an increase should be favored, in general, by the shippers and opposed by the carriers. In Alabama, where the higher minimum has been put to the test, the record indicates that it has substantially increased average car loadings, to the carriers' advantage in economy and efficiency of operation. This has also been the effect of similar increases in the past.

11. While the shippers are not urging impoverished agricultural conditions as a reason for charity in fertilizer rates, they do urge that it is our duty, a duty which the Hoch-Smith resolution has emphasized, to distribute the burden of freight rates on sound economic principles. Such principles, they believe, will lead us to place the heaviest relative burden upon high-grade traffic of the luxury class and the lightest relative burden upon low-grade traffic in

essential or basic commodities, intermediate grades of traffic being treated accordingly. Tested by such principles, they assert that fertilizer is entitled to especially favorable treatment, particularly when due weight is given to its extraordinary importance to southern agriculture and to the fact that freight rates on the average account for at least 25 per cent of its cost to the farmer.

12. The shippers incidentally refer to the fact, shown of record, that the southern carriers are now enjoying a fair degree of prosperity. Under the circumstances, they say, there is no ground for fear that a slight reduction in the level of fertilizer rates might impoverish the carriers. They also direct attention to the fact that, inasmuch as fertilizer factories are scattered widely throughout southern territory the hauls from the plants to the farms are comparatively short, and movement by truck instead of by rail is entirely feasible. It would be a mistake, they believe, to adopt a scale of rates which would encourage such competition, which is continually growing in inimportance.

So much for the salient points made by the parties to the proceeding. In his proposed report the examiner recommended a scale somewhat higher than the shippers' scale and somewhat lower than the carriers'. Upon argument the carriers conceded that the scale so recommended would about maintain their aggregate revenues. But our decision can not properly be predicated solely upon an attempt to average existing rates and maintain revenues. It is here our duty to determine what are maximum reasonable rates and to prescribe such rates, whether the effect be to increase or reduce the carriers' earnings. The traffic test furnishes evidence as to the level of existing rates, both interstate and intrastate, on fertilizer in southern territory; but while [fols. 37-32] this evidence is entitled to weight in arriving at maximum reasonable rates it is not controlling.

The doctrine that the burden of rail transportation should be distributed among the various kinds of freight with some regard for the economic needs of the country has always had recognition, in one way or another, in the rate structure. The familiar principle of "charging what the traffic will bear" or, as some prefer to put it, of "not charging

what the traffic will not bear," has no doubt had that result in some degree. The principle which has been quite generally recognized in public regulation, that the value as well as the cost of service is a factor entering into the determination of just and reasonable rates, has had a similar result. In another form the same thought seems to be predominant in the Hoch-Smith resolution. But the inevitable result of such a distribution of the transportation burden must be that some kinds of freight traffic, under just and reasonable rates, will earn materially less for the carriers than others.

There are manifest limitations to the doctrine. It may be conceded that we have no power to fix rates upon any kind of freight which will fail to produce some margin over operating cost. Moreover the fact that certain carriers are largely dependent upon a particular form of traffic and have little opportunity to recoup a deficiency in profit upon such traffic by recourse to higher rates upon other kinds must be taken into consideration. But here we are without evidence as to the cost of service, and it is not understood that the carriers contend that even the shippers' scale would result in operating loss. Nor does it appear that fertilizer traffic is the main reliance of any of the respondent carriers. So far as the record discloses the traffic of all is reasonably well diversified.

We have in the past made this statement as to fertilizer traffic:

> Fertilizer is a low-grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the sense that "special service" is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions, it is entitled to comparatively low rates. Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co., 18 I. C. C. 49, 52-53; Meridian Fertilizer Factory v. V. S. & P. Ry. Co., 20 I. C. C. 554, 555; Meridian Fertilizer Factory v. T. & P. Ry. Co., 26 I. C. C. 351, 353; and other cases.

Nothing of record makes any modification of that statement necessary. The carriers contend that, in fixing maxi-

mum reasonable rates, we can not lawfully take into consideration the fact that the use in industry of a particular commodity results in additional freight traffic—in other words, that the commodity is a traffic producer. It is unnecessary to pass upon that issue here. There are commodities of lower grade than fertilizer. For example, a witness for the Alabama commission conceded that fertilizer rates should be somewhat higher than those on sand and [fols. 37-33] gravel, slag, crushed stone, coal, and commodities of that class. Yet it is of distinctly low grade, its value for the most part being well within $1,000 per car; there is little or no "special service" attendant upon its transportation, and few claims for loss or damage; and its free and liberal use is of extraordinary importance to southern territory.

It may be that such a change in the level of fertilizer rates, up or down, as could reasonably be considered would in itself have comparatively slight effect upon the financial status of the southern farmer. But that does not alter the fact that upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. The need for continued progress in the use of fertilizer is so great and the degree of its use, as this record clearly shows, is so dependent upon financial considerations that all burdens associated with its use should be made as light as possible. In this connection it may not be amiss to say that if an increase in the carload minimum weight should have the effect of encouraging cooperation among farmers in the purchase and handling of fertilizer it would serve a most desirable end. The record furnishes strong reason for belief that the great excess of the credit price over the cash price and the necessity, under which many of the smaller farmers now labor, of purchasing on the credit plan is one of the major obstacles that impede the proper use of fertilizer. It also suggests that substantial economies are possible through the cooperative purchase and mixing of materials, aided by the advice of State and Federal agencies.

The effect of increased car loading, so far as the carriers are concerned, may be shown by comparing the car-mile earnings for representative distances under their single-

line scale and minimum of 15 tons with the similar earnings under the shippers' single-line scale and minimum of 20 tons:

	Carriers' scale	Shippers' scale
	Cents	Cents
5 miles	270	320
25 miles	88	96
50 miles	54	58
75 miles	42	45.3
100 miles	38	39
150 miles	29	32.7
200 miles	25	29.5
250 miles	22	27.6
300 miles	20	25

[fols. 37-34] While it appears that the average loading of fertilizer in southern territory is now 23 tons or more, so that the actual car-mile earnings under the carriers' scale would be materially greater than those shown in either column of the above table, and while the carriers claim that the prescription of a minimum of 20 tons in place of the present 15 tons would not increase this average loading, the record indicates that an increase in minimum has in the past brought about a higher average loading and that such has been the effect of the 20-ton minimum recently established within Alabama.

An exhibit of record shows that in 1923 the average car-line revenue earned by all Class I roads in the southern district for an average haul of 214 miles was 25.6 cents, and that the average ton-mile revenue was 9.59 mills. In contrast, the car-mile earnings, upon the basis of the 20-ton minimum, under the shippers' single-line scale would be 29.4 cents for a 214-mile haul, and the ton-mile earnings would be 14.7 mills. Allowance should be made in this comparison for the fact that the 214-mile average haul in 1923 for all southern carriers is an average for individual roads and is thus based, in part, upon portions of through joint-line hauls for which divisions of through rates were received by the individual carriers, and also for the fact that it is based to some extent upon hauls over circuitous routes. But even if allowance be made for these facts, the compari-

son nevertheless serves to show that the shippers' scale is by no means so low, compared with the level of freight rates in general, as the carriers contend.

Carriers and shippers agree, with a single exception, that a uniform level of fertilizer rates is desirable throughout all of southern territory. The single exception is the Florida East Coast, which desires a somewhat higher level to and from points in the Florida peninsula. Considering all the circumstances surrounding this particular form of traffic and the general agreement upon this point, resulting in a paucity of evidence to the contrary, we think that the record supports one uniform level.

Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint-line than for single-line hauls. The carriers would maintain such a difference for all hauls, while the shippers would have it disappear at 500 miles. In the Southern Class Rate Investigation, supra, we prescribed the same class rates for both classes of hauls, making the scale for this reason somewhat higher than it would have been if prescribed for single-line hauls only. In general the parties are in accord that whatever rule for computing distances is applied in connection with class rates shall be employed also for determining the rates here in issue. In our second supplemental report in the Southern Class Rate Investigation, 113 I. C. C. 200, [fol. 37-35] decided July 19, 1926, we found that in computing distances the shortest routes should be used over which carload freight can be moved without transfer of lading, making the scale somewhat higher than if the "shortest workable" routes had been used as the measure. Carriers and most shippers agree that some definite rule for the computation of distances which may be applied without the exercise of judgment is desirable, inasmuch as it lessens the time and expense of preparing rates for publication and avoids controversies as to the proper rate-making distances. Unquestionably, also, there are many practical advantages in adopting a uniform rule for computing distances. When one basis is adopted and consistently adhered to, distances once computed may be applied for the ascertainment of rates on any commodity or class, where distance scales are employed.

In a general way the same principle applies to the question of whether rates for joint-line service should be made higher than those for single-line service. If on one commodity arbitraries for joint-line service be employed, while on another commodity one scale is used for both single-line and joint-line service, the distance which determines the rate between particular points will often be different in one case from that in the other. There will also be like variations as between different commodities on which joint-line arbitraries are applied, depending upon the volume of the arbitrary as compared with the volume of the single-line rate to which it is added.

Manifestly where no additions are allowed for joint-line service and where short-line distances are used as the single scale should be correspondingly increased. As above noted, of the total fertilizer traffic covered by the traffic test, single-line rates were applied to 67 per cent. Joint-line arbitraries were therefore applied to only about one-third. It is also true that where joint-line arbitraries are used the carriers in many instances do not secure the full amount of the arbitrary nominally applicable for any given distance, for often slightly longer single-line routes will determine the applicable rates. Under the circumstances the elimination of joint-line arbitraries will require a comparatively small increase in the single-line scale.

The record contains no evidence as to cost of service which furnishes material help in determining the proper progression of the scale. In the Royster scale the progression is now exceedingly ragged. The shippers' scale progresses 10 cents for each 5-mile block up to 25 miles, then 5 cents for each 5-mile block up to 100 miles, then 10 cents for each 10-mile block up to 260 miles, then 10 cents for each 20-mile block up to 500 miles, and for all greater [fol. 37-36] distances 10 cents for each 25-mile block. It will be evident that the shippers' scale involves a drop of 50 per cent in the rate of progession at 25 miles, another like drop at 260 miles, and a drop of 20 per cent at 500 miles. Roughly, the rate of progression represents the charge for the line-haul service. Notwithstanding the lack of data in the record bearing upon the cost of service, it appears that there is no warrant for the conclusion that a reasonable

charge for the line-haul service immediately beyond 260 miles, for example, is one-half of a reasonable charge for the service immediately short of that distance. We are of the opinion that the drops in progression in the shippers' scale are too abrupt. In the scale found reasonable below we have adopted a somewhat different rate of progression.

In the No. 9702 scale the rate for 100 miles is $2.30, yielding, on the minimum of 15 tons prescribed in that case, $34.50 per car and 34.5 cents per car-mile. A rate of $2.10 for this distance, based on a 20-ton minimum, would yield $42 per car and 42 cents per car-mile, somewhat higher earnings than the Royster rate based on a 15-ton minimum. In his proposed report the examiner used this rate of $2.10 for 100 miles as a starting point in determining the measure of his scale.

Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, and having in mind the principles which we believe should be applied in distributing the burden of rail transportation and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted.

We therefore find that the rates applicable to the interstate transportation in carloads of mixed fertilizers and of the fertilizer materials listed in Appendix B hereto over standard lines throughout the territory described in Appendix A hereto are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table below, subject to the minimum carload weights found reasonable below; provided, however, that in applying such rates to the longer hauls the respondent carriers may for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups.

	Rate Cents
[fol. 37-37] 10 miles and under	100
15 miles and over 10	110
20 miles and over 15	120
25 miles and over 20	125
30 miles and over 25	135
35 miles and over 30	140
40 miles and over 35	150
45 miles and over 40	155
50 miles and over 45	165
55 miles and over 50	170
60 miles and over 55	180
65 miles and over 60	185
70 miles and over 65	195
75 miles and over 70	200
80 miles and over 75	205
85 miles and over 80	210
90 miles and over 85	215
95 miles and over 90	220
100 miles and over 95	225
110 miles and over 100	235
120 miles and over 110	245
130 miles and over 120	255
140 miles and over 130	265
150 miles and over 140	275
160 miles and over 150	285
170 miles and over 160	295
180 miles and over 170	305
190 miles and over 180	315
200 miles and over 190	320
210 miles and over 200	330
220 miles and over 210	335
230 miles and over 220	345
240 miles and over 230	350
250 miles and over 240	360
260 miles and over 250	365
270 miles and over 260	375
280 miles and over 270	380
300 miles and over 280	385
320 miles and over 300	410
340 miles and over 320	425

	Rate Cents
360 miles and over 340	440
380 miles and over 360	450
400 miles and over 380	460
420 miles and over 400	470
440 miles and over 420	480
460 miles and over 440	490
480 miles and over 460	500
500 miles and over 480	505
520 miles and over 500	515
540 miles and over 520	525
560 miles and over 540	535
580 miles and over 560	545
600 miles and over 580	555
620 miles and over 600	565
640 miles and over 620	575
660 miles and over 640	585
680 miles and over 660	595
700 miles and over 680	605
720 miles and over 700	615
740 miles and over 720	620
760 miles and over 740	630
780 miles and over 760	635
800 miles and over 780	645
825 miles and over 800	655
850 miles and over 825	665
875 miles and over 850	675
900 miles and over 875	685
925 miles and over 900	695
950 miles and over 925	705
975 miles and over 950	715
1,000 miles and over 975	725

We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of any of the short or weak lines described below are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above plus an arbitrary of not to exceed 50 cents per net ton,

subject to the minimum carload weight found reasonable below, such arbitrary to accrue solely to the participating short or weak line or lines. The short and weak lines covered by this finding are the carriers listed in Appendix D hereto, other than those that are under common control or management with some standard carrier, and also include the Columbus & Greenville, the Kinston Carolina, the Carolina Railroad, the Gulf, Mobile & Northern, the Birmingham & Northwestern, and the Atlanta, Birmingham & Atlantic, so long as they remain independent of standard-line control.

We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of the lines of the Nor- [fol. 37-38] folk Southern are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above, subject to the minimum carload weights, found reasonable below, plus 10 per cent, but in no event to exceed 50 cents per net ton, such excess over and above the standard rates to accrue solely to the Norfolk Southern.

All carriers not covered by the findings of the two preceding paragraphs shall be classed as standard. With respect to the so-called short or weak lines it may be said, as was stated in Southern Class Rate Investigation, 100 I. C. C. 513, 653-654, that most of these roads are situated wholly within the limits of a single State and the State commissions are in a much better position than we are to investigate and determine their needs. It is our hope that the State commissions will, either before or after the rates herein prescribed become effective, bring to our attention any instances where the special treatment accorded these short or weak lines is, in their opinion, more or less liberal than their just needs require.

We further find that a reasonable carload minimum weight on mixed fertilizers will, for the future, be 40,000 pounds, and that all fertilizer materials which are now accorded a lower minimum may be increased to that amount, except cottonseed hulls for which we find that a minimum of 30,000 pounds is reasonable.

In computing distances for the application of the foregoing rates, we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading.

The carriers propose to maintain rates on less-than-carload traffic, as do also the shippers, made 120 per cent of the carload rates. This is the classification basis in southern territory and has been in effect for some time. This spread between less-than-carload and carload rates, however, seems too small when compared with the spread between corresponding rates on other commodities. The less-than-carload fertilizer traffic in this territory is apparently not of great proportions. It was shown that the less-than-carload shipments from various manufacturers in Alabama represented but 2.14 per cent of their total rail movement, and that of a total tonnage of 16,847 tons moving from Blackshear in 1924 to destinations in Florida and Georgia only 1,426 tons, or 8.4 per cent, consist of less-than-carload shipments. While the record is not altogether satisfactory upon this point, it is nevertheless adequate to warrant the conclusion that the less-than-carload rates should not be less than 130 per cent of the carload rates.

We therefore find that the rates applicable to the interstate transportation in less than carloads of the afore- [fol. 37-39] said mixed fertilizers and fertilizer materials throughout the territory described in Appendix A hereto are, and for the future will be, unreasonable to the extent that they exceed rates per net ton equal to 130 per cent of the corresponding rates prescribed herein for carload shipments.

Exceptions to the General Adjustment

An exception to the strict application of the distance scales is proposed by the carriers in connection with fertilizers and materials from the Ohio River crossings. Under their proposed adjustment to points in Carolina territory, Louisville was to be taken as the pivotal point, applying the distance rates therefrom, with rates from Cincinnati made the same as from Louisville, and those from Cairo and Evansville made 79 cents higher than from Louisville. This differential of 79 cents represented, it is under-

stood, the average difference in the rates, based on the Royster scale, to representative points in the Carolinas from Louisville, on the one hand, and from Cairo and Evansville, on the other.

To Mississippi Valley territory [6] the carriers proposed to maintain rates from the respective crossings, Cairo to Louisville, inclusive, on the strict distance scales. From Cincinnati, Covington, Ky., Newport, Ky., Lexington, Ky., and other points grouped therewith, they proposed to maintain rates to the Mississippi Valley made 55 cents higher than the rates in effect from Louisville. This differential represented about the average difference in the rates under the Royster scale from Louisville and Cincinnati.

To destinations in Montgomery and Atlanta subterritories [7] the carriers proposed to maintain rates from Cairo and Evansville the same as from Louisville, with rates from Cincinnati and points grouped therewith made 55 cents higher to points in Montgomery subterritory, and the same as from Louisville to points in Atlanta subterritory. In this adjustment Louisville was taken as the pivotal point, [fol. 37-40] rates to be established therefrom in accordance with the distance scales. The distance from Cincinnati to points in Montgomery subterritory is said to be substantially 110 miles greater than from Louisville, which resulted generally in rates under the Royster scale 56 cents higher than from Louisville. The present differential is 54 cents, and the median was used.

[6] The rate territories in the Southeast were described in Southern Class Rate Investigation, 100 I. C. C. 513, 522-523, as follows:

"* * * southern territory has been divided into certain districts which are generally recognized but not easy to define by exact limits. On the west is a wedge-shaped district, known as Mississippi Valley territory, the western boundary of which is the Mississippi River and the eastern boundary a line running from Paducah, Ky., to Mobile, Ala., and following for the most part the Mobile & Ohio Railroad. To the east of this district lies southeastern territory. Its northern limits are vague, but apparently the boundary is the Memphis division of the Southern and, strictly speaking, it does not extend into Kentucky or include any large area in Tennessee, although portions of those States are frequently treated as within the Southeast. Certainly it embraces Alabama, Georgia, northern Florida, and the extreme southern portion of South Carolina. It is divided into Montgomery subterritory and Atlanta subterritory by a line running from Chattanooga, Tenn., to Birmingham, Ala., thence to Columbus, Ga., and thence south to the Gulf. Carolina territory includes North Carolina, the northern part of South Carolina, and the strip of Virginia south of the line of the Norfolk & Western."

It is understood that the rates under this proposed adjustment from the Ohio River crossings would apply largely on fertilizer materials such as tankage, dried blood, and cyanamid, originating beyond the crossings, and that little or no mixed fertilizer tonnage would be handled thereunder.

Objection was voiced by counsel for the Kentucky commission to grouping Lexington with Cincinnati, Lexington being located 100 miles south of that crossing. It is his contention that this interior point should have the benefit of its location. The only reasons advanced for this grouping are that it has been maintained for a considerable time and places the shippers at those points on an equality. These reasons are not persuasive.

With this exception as to Lexington, no objections were made to the proposal of the carriers respecting the relative adjustment of rates from the Ohio River crossings. To the extent that this adjustment may be accomplished without deviation from our findings as to reasonable maximum rates, and under the fourth-section relief hereinafter accorded, there seems, with the exception noted, to be no sufficient reason for disapproval.

Import Rates

The carriers object to consideration of the import rates in this proceeding, contending that our order did not embrace that traffic. The shippers take the opposite view. Rates on foreign commerce are not covered by the order and hence, under strict construction, the investigation does not include import rates. This point, however, is not of importance, for the shippers do not urge specific findings at this time with respect to import traffic. Both the carriers and the shippers propose a limited system of port equalization, brought about, in general, by applying the domestic-distance scales from the nearest port and placing other competing ports within reasonable limits upon the same basis. This equalization would apply only to points located some little distance from the seaboard, say 200 miles from the nearest port. For the shorter distances the rates from each port would be made in accordance with the scale. In such equalization the Gulf ports and the south Atlantic ports are to be considered two distinct and unrelated groups.

[fol. 37-41] It seems to be the shippers' thought that the carriers should propose and submit to them for their study and suggestions a comprehensive adjustment covering import traffic. No objection was voiced by the carriers to such procedure.

Fourth-Section Relief [10]

The carriers ask for relief from the long-and-short haul provision of the fourth section which may be summarized under the following heads:

1. Relief to enable circuitous routes to meet the rate of the direct route between competitive points without observing such rate as maximum at intermediate points, subject to the limitation to such relief required by the fourth section.

2. Relief to enable the maintenance of the proposed related adjustment from the Ohio River crossings, such relief not to be subject to the limitation required in the case of relief granted on the ground of circuitry, except from the pivotal points.

3. Relief to enable joint-line routes to meet the rate of a single-line route between competitive points without observing such rate as maximum at intermediate points, the rates to such intermediate points, however, in no case to be higher than the joint-line scale.

4. Relief to enable routes in which short or weak lines participate to meet the rate of a standard route between competitive points without observing such rate as maximum at intermediate points on the short or weak line.

The relief sought under the first head is similar to that ordinarily granted in such cases, but in prescribing rates relatively low because of the character of the traffic, as we are doing in this proceeding, doubt exists as to whether routes of great circuity may lawfully be given the relief which they seek or, in other words, whether the resulting

[10] Various fourth-section applications of the southern carriers, as set forth in Appendix E, were assigned for hearing in connection with this proceeding in so far as they covered rates on fertilizer and fertilizer materials between points in southern territory.

rates would be "reasonably compensatory" over such routes. For example, the Mobile & Ohio desires to meet over its circuitous route through Artesia, Miss., the rate of the direct line of the Louisville & Nashville between Mobile and Montgomery, Ala. The distance from Mobile to Montgomery over the Louisville & Nashville is 178 miles, while over the route of the Mobile & Ohio it is 401 miles, or 125 per cent longer. The carriers vigorously oppose the imposition of any limitation on circuity. They say that such a limitation requires the specific designation of the routes over which the rates apply, and to do this is impracticable from a tariff standpoint. [fol. 37-42]

This precise question was presented in Brick and Clay Products in the South, 88 I. C. C. 543. In our report in that proceeding we authorized the carriers over indirect routes to meet the rates of direct routes at competitive points and maintain higher rates at intermediate points, subject to the proviso that the relief granted shall not apply (1) where the short route is 150 miles or less and the longer route is more than 70 per cent circuitous; and (2) where the short route exceeds 150 miles in length and the longer route is more than 50 per cent circuitous, provided, however, that where the short route exceeds 150 miles and the longer route does not exceed 255 miles, relief will apply to such longer route even though more than 50 per cent circuitous. In the report on further argument, 113 I. C. C. 380, we declined to grant the carriers' request that these circuity restrictions be eliminated from our order, but we authorized the use of a rule to be published in the tariffs, applying these limitations with certain modifications, which would obviate the necessity for enlarging the tariffs by publishing individual routings. We see no reason why the same limitations and methods of applying them should not be adopted in the instant case, and our order will be framed accordingly.

The maintenance of the proposed related adjustment from the Ohio River crossings is, in our opinion, an insufficient reason for granting the relief sought under the second head above. If, however, a plan of grouping is adopted with our approval in connection with the longer hauls and it becomes necessary to obtain fourth section relief for the

purpose of maintaining such grouping, which shall not be subject to the limitation attaching to relief granted on the ground of circuity, an appropriate request for such relief will then receive consideration.

In view of the findings herein made the relief sought under the third head need not be considered.

Relief under the fourth head is sought because of the financial necessities of the short or weak lines. These carriers frequently have been accorded in other cases the relief which they here seek. It will be granted, subject to the limitations that the rates to the intermediate points on the short or weak lines shall not exceed the rates herein found to be reasonable to such points and in no case shall exceed the lowest available combination.

The Intrastate Cases

We come now to a consideration of the petition of the carriers alleging undue prejudice against interstate shippers and localities and unjust discrimination against inter- [fol. 37-43] state traffic, in violation of sections 3 and 13 of the interstate commerce act, by reason of the intrastate rates maintained in Alabama, Georgia, and South Carolina. The carriers' evidence was directed almost entirely to a comparison of the interstate rates from manufacturing points outside the respective States with the intrastate rates from plants within those States, the destinations selected being generally located on lines operating between such manufacturing points.

Taking up, first, the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment. In conjunction with the present rates are shown also the rates under the single-line Royster scale and under the scale herein found reasonable, for the distances shown:

From—	To—	Distance	Present rates	Royster scale	Scale herein prescribed
		Miles	Cents	Cents	Cents
Tupelo, Miss.	Glen Allen, Ala.	72	230	214	200
Birmingham, Ala.	do	75	170	214	200
Chattanooga, Tenn.	Larkinsville, Ala.	62	210	203	185
Decatur, Ala.	do	60	155	203	180
Nashville, Tenn.	Elkmont, Ala.	98	259	259	225
Birmingham, Ala.	do	107	205	259	235
Columbus, Ga.	Superior, Ala.	46	203	180	165
Montgomery, Ala.	do	49	145	180	165
Columbus, Ga.	Alexander City, Ala.	75	237	214	200
Birmingham, Ala.	do	82	180	237	210
Rome, Ga.	Anniston, Ala.	63	216	203	185
Birmingham, Ala.	do	63	160	203	185
Atlanta, Ga.	Heflin, Ala.	85	259	237	210
Birmingham, Ala.	do	82	180	237	210

In the foregoing table, destinations have been selected approximately equidistant from the respective origins, but for other distances the intrastate and interstate rates bear a similar relation. Manufacturing plants are located at all the originating points shown, and the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls.

The Alabama commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks, 85 I. C. C. 66, and that before an intrastate rate may be condemned it must be found to work undue prejudice against persons or localities in interstate or foreign commerce or unjust discrimination against interstate or foreign commerce as a whole, cit- [fol. 37-44] ing Wisconsin R. R. Commission v. C., B. & Q. R. R. Co., 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the Alabama rate is 5 tons higher than under the interstate rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but specific consideration of the present interstate rates is unnecessary, for they will be changed under our findings herein. As shown by the above table, the new rates will be substantially higher for equal distances than the Alabama intrastate rates, and they will be subject to the same carload minimum.

While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful.

Effective November 15, 1924, the Georgia Public Service Commission promulgated a scale of rates on fertilizer generally lower than that then in effect. These rates were temporarily enjoined by the Federal court for the Northern District of Georgia by reason of their effect on certain short lines, and thereafter the Georgia commission rescinded its order. The present rates are those which have been in effect in that State since 1897, as revised under the general rate changes. The showing with respect to interstate rates into Georgia over single-line routes as compared with corresponding intrastate rates is as follows:

From—	To—	Distance	Present rates	Royster scale	Scale herein prescribed
		Miles	Cents	Cents	Cents
Montgomery, Ala.	Nesbit, Ga.	172	372	327	305
Savannah, Ga.	do	168	293	315	295
Montgomery, Ala.	Pine Park, Ga.	204	338	349	330
Savannah, Ga.	do	208	315	349	330
Dothan, Ala.	Naylor, Ga.	148	327	293	275
Savannah, Ga.	do	144	282	293	275
Chattanooga, Tenn.	Bowdon Junction, Ga.	131	270	282	265
Macon, Ga.	do	128	259	270	255
Chattanooga, Tenn.	Hamby, Ga.	39	169	169	150
Rome, Ga.	do	39	135	169	150
Jacksonville, Fla.	Thalmann, Ga.	73	237	214	200
Savannah, Ga.	do	70	169	214	195

[fol. 37-45] The record does not include a similar comparison of joint-line interstate rates with the current joint-line rates within Georgia. The commission of that State contends that, in using single-line rates, the true situation is not presented inasmuch as joint-line rates in Georgia are made on the full combination basis. It points to the showing of record that the carriers' joint-line rates are not in a single instance, save one, higher than the joint-line rates in Georgia, but, on the contrary, are in most cases considerably lower. The Georgia commission further states that the present basis of rates has been in effect for many years, and that this is the first time that unjust discrimination against interstate commerce has been alleged. No interstate shipper testified in this proceeding that he is at a disadvantage because of the Georgia rates. It was testified, however, by a representative of the Central of Georgia that the bulk of its fertilizer traffic in Georgia moves on single-line rates.

On this record the joint-line rates in Georgia can not be condemned. They are not shown to operate to the prejudice of interstate shippers nor to place a burden on interstate commerce. Nor, after the adoption of the scale prescribed herein for application on interstate traffic, does it appear that the single-line rates in Georgia will, on the whole, result in unjust discrimination against interstate commerce or in undue prejudice to persons or localities in interstate commerce.

The Railroad Commission of South Carolina took no part in this proceeding. The intrastate rates attacked by the carriers in No. 16235 are those prescribed by that commission in its order of February 11, 1924, which rates became effective March 15 of that year. The rates then required to be published were 12 per cent lower than the rates theretofore in effect, which had been maintained since 1920, as revised by the general rate changes. Again

on January 30, 1925, the South Carolina Commission ordered a still further reduction in the carload rates on fertilizer and materials, but this order was temporarily enjoined by the Federal court for the Eastern District of South Carolina, and the proceeding was still pending when argument was here had. Joint rates in South Carolina are made 20 per cent less than the full combination.

The alleged disparity between the intrastate and interstate rates is illustrated by the following examples:

[fol. 37-46]

From—	To—	Distance	Present rates	Royster scale, single line	Scale herein prescribed
		Miles	Cents	Cents	Cents
Charlotte, N. C.	Cornwell, S. C.	52	237	192	170
Columbia, S. C.	do	55	179	192	170
Wadesboro, N. C.	Middendorf, S. C.	64	237	203	185
Columbia, S. C.	do	68	188	214	195
Wadesboro, N. C.	Scranton, S. C.	85	237	237	210
Charleston, S. C.	do	82	209	237	210
Wilmington, N. C.	Winona, S. C.	101	259	259	235
Charleston, S. C.	do	112	248	270	245
Augusta, Ga.	Yenome, S. C.	61	203	203	185
Columbia, S. C.	do	68	188	214	195
Augusta, Ga.	Springfield, S. C.	58	203	203	180
Columbia, S. C.	do	43	158	180	155
Augusta, Ga.	Hagwood, S. C.	130	304	270	255
Charleston, S. C.	do	130	268	270	255
Savannah, Ga.	Springfield, S. C.	109	270	259	235
Charleston, S. C.	do	101	238	259	235

Savannah, Ga.	Pelion, S. C.	129	304	270	255
Charleston, S. C.	do	121	258	270	255
Savannah, Ga.	Ward, S. C.	156	338	315	285
Charleston, S. C.	do	150	288	293	275
Savannah, Ga.	Westminster, S. C.	324	473	439	425
Charleston, S. C.	do	301	337	428	410
Atlanta, Ga.	Kings Creek, S. C.	220	383	349	335
Augusta, Ga.	do	199	372	338	320
Charleston, S. C.	do	240	337	372	350

Many other comparisons were made, including interstate rates into South Carolina with the South Carolina distance scale. This further showing is similar to the foregoing, and need not be detailed here. The following comparisons show the relation between the present single-line intrastate rates and the scale herein prescribed, the South Carolina rates which stand temporarily enjoined being also shown:

	Present rates in South Carolina	Scale herein prescribed	South Carolina rates temporarily enjoined
	Cents	Cents	Cents
5 miles	90		80
10 miles	90	100	86
15 miles	109	110	98
20 miles	119	120	114
25 miles	129	125	123
35 miles	139	140	133
45 miles	158	155	151
50 miles	169	165	161
60 miles	179	180	171
70 miles	188	195	179
75 miles	198	200	179
85 miles	209	210	189
90 miles	218	215	199
100 miles	228	225	208
110 miles	238	235	217
115 miles	248	245	217
125 miles	258	255	227
130 miles	268	255	236
135 miles	277	265	236
140 miles	277	265	247
145 miles	288	275	247
150 miles	288	275	255
160 miles	297	285	264
180 miles	307	305	283
190 miles	317	315	292
210 miles	327	330	302
300 miles	337	395	321
320 miles		410	331

The Southern States Phosphate & Fertilizer Company, with factories at Savannah and Augusta, showed the disadvantage it has been under since March 15, 1924, in marketing its products at South Carolina destinations. Savannah and Augusta meet their principal competition from [fol. 37-47] Charleston and Columbia, respectively. The average difference in rates in favor of Charleston is shown to be around 40 cents per ton, and about 22 cents per ton in favor of Columbia. This company claims reparation based solely on the foregoing showing of disparity, but its only allegation is that of undue prejudice, and in the case of that violation of the law a mere difference in rates does not alone necessarily measure the amount, or prove the fact, of a shipper's damage. Penna. R. R. Co. v. International Coal Co., 230 U. S. 184; Kerr & Co. v. S. S. Ry. Co., 62 I. C. C 296.

Unquestionably the present rates within South Carolina prejudice persons and localities in interstate commerce and prefer intrastate shippers. Furthermore, the reduced intrastate rates prescribed by the South Carolina Commission in its order of January 30, 1925, if permitted to become effective, would result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce, as compared with the interstate rates herein prescribed. As compared with the latter rates, however, the present rates in South Carolina would not, on the whole, result in such unjust discrimination or undue prejudice.

With respect to these intrastate cases we find:

1. That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce.

2. That, in view of the rates herein prescribed, the maintenance of the present intrastate rates in Georgia will not for the future result, on the whole, in undue prejudice to persons or localities in interstate commerce, nor in unjust discrimination against interstate commerce. Such few intrastate rates as are not in harmony with the rates herein found reasonable should and no doubt will be revised.

3. That, in view of the rates herein prescribed, the maintenance of the present intrastate rates in South Carolina will not for the future result, on the whole, in undue prejudice to persons or localities in interstate commerce, nor in unjust discrimination against interstate commerce, but that the maintenance of the intrastate rates in that Sate now temporarily enjoined would result in such undue prejudice and unjust discrimination.

No orders will be entered in these State cases, Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment.

[fol. 37-48] Cottonseed Meal

The cottonseed meal interests state that this commodity has been included in the list of fertilizer materials since 1889, and they now seek a finding that it should be so continued. The carriers are willing to continue such a classification for the present, but they strongly object to its indefinite continuance. While in southern territory the predominant use of cottonseed meal is that of fertilization, in the Southwest and in official territory it is used almost exclusively for feeding purposes. It is the carriers' thought that as time goes on it may be used more and more for the latter purpose also in southern territory, so that in the future the classification may more appropriately be with feed rather than with fertilizer materials.

In the season of 1923-24 over 600,000 tons of cottonseed meal were produced in southern territory, and the meal interests roughly estimate that about 73 per cent of this tonnage was used as a fertilizer or fertilizer material. Its fertilizing characteristics are especially desirable in tobacco growing, although it is also used to quite an extent on cotton and other crops, principally in combination with other materials. The price of cottonseed meal is said to have been about $35 a ton when the crushing season opened in 1925.

We find that cottonseed meal should for the present be classified as a fertilizer material in southern territory.

Cyanamid

Cyanamid is manufactured by the American Cyanamid Company, a Maine corporation, at Niagara Falls, Ontario, Canada, the only present point of production in North America. It is a product obtained by combining the nitrogen of the air with lime and coke, and in its marketable state is a grayish powder containing about 26 per cent of ammonia. It is said to be the cheapest form of organic ammonia available. Besides its value as an ammoniate, it is an excellent conditioner of fertilizer mixtures, making the latter dry and friable and easy to apply to the soil. Owing to its high lime content, however, only about 60 pounds can be used normally in a ton of commercial fertilizer. For the first six months of 1925 it was testified that the price of cyanamid, f. o. b. origin, was $1.68 per unit of ammonia, which it is understood figures $43.68 per ton of cyanamid. It is shipped in burlap bags containing 200 pounds each, the average car loading is around 50,000 pounds, and no loss or damage claims have ever been filed. The production of cyanamid has been increasing steadily, over 62,000 tons having been shipped from Niagara Falls during the year ending March 31, 1925. Of this tonnage, [fol. 37-49] 56 per cent went into southern territory. During the same period over 14,000 tons were imported from European countries, most of which was used in the southern States.

No joint rates are in effect to southern territory, and this company seeks proportional rates from the Ohio River crossings and Virginia cities made 62 per cent of whatever distance scale may be adopted for general application. It shows that at the present time it has commodity rates to many points in official territory which approximate 70 per cent of the sixth-class rates, the rating accorded fertilizer and materials in that territory, and that to the Virginia cities it has a proportional rate, applicable on traffic destined to southern points, of $5.40 a ton, which is 62.7 per cent of the sixth-class rate. This latter affords the basis for the rates sought.

To points in South Carolina the average through charge is shown to be a little over $10 a ton, with a weighted average rate of $8.99. To Alabama, the weighted-average rate

is $9.37 and the average through charge $9.66. The scale herein prescribed will not materially affect the through charges.

It was shown that shipments made to destinations in Alabama, Georgia, North Carolina, and Florida during the year ending March 31, 1925, moved a weighted average distance of 414 miles beyond the Virginia cities, at a weighted-average rate of $4.54, and it is strongly urged that as the average haul of cyanamid in southern territory is approximately four times greater than that of fertilizer, it is entitled to rates on a considerably lower basis than the corresponding local rates from these gateways.

In Southern Class Rate Investigation, supra, joint rates, with certain exceptions, were prescribed as reasonable from points in official territory to destinations in the South substantially lower than the combination basis over the Ohio River or the Virginia cities. The cyanamid interests urge that the principle there recognized applies with even greater force to commodity rates.

While it may well be that joint rates should be established on cyanamid from Niagara Falls to points in southern territory, or that in lieu thereof proportional rates lower than the corresponding local rates should be established from the Ohio River crossings and Virginia cities to such points, we are not persuaded that we have authority in this proceeding to require the establishment either of such joint rates or of such proportional rates. Only rates for the movement of fertilizer and fertilizer materials between points in southern territory are in issue in this proceeding, [fol. 37-50] and proportional rates from the Ohio River crossings or the Virginia cities are not such rates. They are rather rates applying to the through movement of traffic from points outside the southern territory to points within such territory. Inasmuch as the situation with respect to this movement of cyanamid, however, has been developed of record, we feel warranted in stating that, in the absence of through joint rates, it seems just and reasonable that proportional rates applicable to this traffic should be established from the Ohio River crossings and the Virginia cities on a somewhat lower basis than the local rates

prescribed herein. We commend this situation to the attention of the carriers.

Appropriate orders embodying our findings herein will be entered.

Appendix A

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 7th Day of October, A. D. 1924

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Order

It appearing, That in many instances interstate rates on fertilizers, fertilizing compounds, and fertilizer materials between points in southern classification territory differ materially for substantially similar hauls and that many of said rates are higher for shorter distances than for longer distances over the same line or route:

And it appearing, from numerous formal and informal complaints to this commission that said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials are in general unsatisfactory to shippers thereunder, that a general revision thereof has been proposed by the carriers serving said territory, and that petitions have been filed by carriers operating in the states of South Carolina and Alabama, alleging that the rates on fertilizers and fertilizer materials in effect within those states cause undue and unreasonable advantage, preference and prejudice as between persons and localities in interstate commerce on the one hand and intrastate commerce on the other;

It is ordered, That a proceeding of investigation and inquiry be, and it is hereby, instituted by this commission on its own motion into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, applicable between points in the territory described in the next following

paragraph, with a view to determine whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

[fol. 37-51] It is further ordered, That said proceeding of investigation and inquiry shall include said rates and charges applicable in interstate commerce between points in the following territory:

1. Between points in the states of Kentucky, (except local points on the Chesapeake & Ohio Railway), Tennessee, Mississippi, Alabama, Georga, Florida, North Carolina, South Carolina, and Louisiana east of the Mississippi River; also between points on the north bank of the Ohio River, Cairo, Ill., to Cincinnati, Ohio, inclusive, and Helena, Ark., on the one hand, and points in the above-named states on the other.

2. Between points in the state of Virginia on the one hand and points in the states of Kentucky (except local points on the Chesapeake & Ohio Railway and south bank Ohio River crossings), Tennessee, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Louisiana east of the Mississippi River on the other.

It is further ordered, That the common carriers named in the appendix* hereto be, and they are hereby, made respondents to the proceeding.

And it is further ordered That this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the Commission:

George B. McGinty, Secretary. (Seal.)

Appendix B

List of Fertilizer Materials

Carload

Ammonia, sulphate of, in packages or in bulk, C. L. minimum weight 30,000 pounds.

Ashes:

Bagasse, cactus, cotton boll, burr or seed hull, manure, sage brush or wood, in packages or in bulk, C. L., minimum weight 30,000 pounds.

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* Omitted because of length.

Kelp, in bags, C. L., minimum weight 30,000 pounds.

Rice hull, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Beet slops (beet sugar final molases residuum), in tank cars, C. L., subject to Rule 35 of Southern Classification.

Blood dried in bulk in bags or barrels, or in bulk, C. L., minimum weight 40,000 pounds.

Bone, charred filtering (animal charcoal), spent, in bags, C. L., minimum weight 36,000 pounds.

Bones, other than human or fresh-meat bones:

Ground, in bags or barrels, C. L., minimum weight 30,000 pounds.

Not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Castor-bean hulls or stems, ground or not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Castor pomace, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Cement flue dust, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Cocoa-bean shells, ground, in bulk in bags, C. L., minimum weight 40,000 pounds.

[fol. 35-52] Cottonseed cake or meal, loose or in bags, C. L., minimum weight 40,000 pounds.

Cottonseed hulls, not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Cottonseed hulls, ground (cottonseed-hull bran), in bags, C. L., minimum weight 30,000 pounds.

Cyanamid, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Distillery molasses fertilizer residuum (dry or liquid residuum from molasses distillation):

Liquid, in tank cars, C. L., subject to Rule 35 of Southern Classification.

Dry, in bags, barrels, or boxes, C. L., minimum weight 36,000 pounds.

Fertilizer blacks (refuse black material for coloring fertilizers), in bulk in bags or barrels, C. L., minimum weight 36,000 pounds.

Fertilizer wool refuse, in machine-pressed bales, C. L., minimum weight 30,000 pounds, subject to Rule 34.

Fertilizer compounds (manufactured fertilizers), N. O. I. B. N., dry, in bulk in cloth or paper bags, or in bulk in barrels or boxes, C. L., minimum weight 30,000 pounds.

Fish scrap, dry, not ground nor pulverized, or acid fish scrap, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Grape pomace:

Dry, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Other than dry, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Iron or steel flue dust, in packages or in bulk, C. L., minimum weight 50,000 pounds.

Lime nitrogen:

In iron or steel barrels, C. L., minimum weight 40,000 pounds.

In tank cars, C. L., subject to Rule 35 of Southern Classification.

Lime (calcium), nitrate of, in double bags or in bulk in barrels, C. L., minimum weight 40,000 pounds.

Meal:

Hoof or Horn, in bags or in bulk, C. L., minimum weight 30,000 pounds.

Kapok seed, in bags or in bulk, C. L., minimum weight 60,000 pounds.

Rape seed, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Senna bean, in bags, C. L., minimum weight 40,000 pounds.

Mussel meat, not edible, dry, in bags or barrels, C. L., minimum weight 30,000 pounds.

Peanut oil cake or oil cake meal, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Peat:

Ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Not Ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Phosphate, basic, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Phosphate Rock:

Ground or pulverized—

Acidulated (acid prosphate), in packages or in bulk, C. L., minimum weight 40,000 pounds.

Acidulated and ammoniated, in packages or in bulk, C. L., minimum weight 40,000 pounds.

[fol. 37-53] Patassium (potash):

Alkali salts, crude, dry, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Beet or cane residuum, in bage, C. L., minimum weight 40,000 pounds.

Carbonate of, crude, in bulk in barrels, C. L., minimum weight 40,000 pounds.

Hartsalz, Kainit, Manure salts, double manure salts or sylvanit, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Muriate of (chloride of potassium), in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

Sulphate of, in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

Tobacco crystals (tobacco potash salts), in bags or barrels, C. L., minimum weight 40,000 pounds.

Sea grass, sea moss, or seaweed:

Kelp, dried or ground, in bags, C. L., minimum weight 30,000 pounds.

Seasame oil cake or oil cake meal, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Shells, clam, mussel, or oyster:

Crushed or ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Not crushed nor ground, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Sodium (soda):

Nitrate of (Chili saltpetre), in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

Nitre cake (crude bi-sulphate of soda), in packages or in bulk, C. L., minimum weight 40,000 pounds.

Soil compounds, containing two or more of the following ingredients:

Potash,	Magnesia,
Phosphates,	Carbonates,
Sulphates,	Iron oxides,
Limes,	Chlorides,
Silicates,	Manganese.

Carload minimum weight 30,000 pounds.

Soy (soja or soya) bean oil cake or oil cake meal, loose or in bags, C. L., minimum weight 40,000 pounds.

Sugar cake mud (refuse from sugar filter presses), in bags, C. L., minimum weight 40,000 pounds.

Sulphur (brimstone), in bulk in bags or in bulk, c. L., minimum weight 40,000 pounds.

Tankage:

Garbage, dry, in bags or in bulk, c. L., minimum weight 40,000 pounds.

Tankage, N. O. I. B. N., in bags or in bulk, C. L., minimum weight 40,000 pounds.

Tobacco, unmanufactured, stems, ground, in bags, C. L., minimum weight 40,000 pounds.

Tobacco dust, refuse, sand, or waste, in packages or in bulk, C. L., minimum weight 30,000 pounds.

[fol. 37-54] Less Carload

Ashes:

Bagasse, cactus, cotton boll, burr or seed hull, manure, sage, brush or wood, in bags.

Kelp, in bags.

Rice hull, in bags.

Bones, other than human or fresh meat bones:

Ground, in bags or barrels.

Not ground, in bags or barrels, or in barrels with cloth tops.

Castor bean hulls or stems, ground or not ground, in bags or barrels.

Cottonseed cake or meal, in bags.

Cottonseed hulls:

Not ground, in bags or barrels, or in machine-pressed bales.

Ground (cottonseed hull bran), in bags.

Cyanamid, in bags or barrels.

Fertilizing compound (manufactured fertilizers), N. O. I. B. N., dry, in bulk, in bags, barrels or boxes.

Lime (calcium), nitrate of, in double bags or in bulk in barrels.

Mussel meat, not edible, dry, in bags or barrels.

Peanut oil cake or oil cake meal, in bags.

Phosphate, basic, in bags.

Phosphate rock:

Ground or pulverized—

Acidulated (acid phosphate), in bags or barrels.

Acidulated and ammoniated, in bags or barrels.

Potassium (potash):

Alkali salts, crude, dry, in bulk in bags, barrels, or boxes.

Hartsalz, kainit, manure salts, double manure salts or sylvanit, in bags, barrels, or boxes.

Muriate of (chloride of potassium), in bags or in bulk in barrels or boxes.

Sulphate of, in bags or in bulk in barrels or boxes.

Tobacco crystals (tobacco potash salts), in bags or barrels.

Sea grass, sea moss, or sea weed:

Kelp, dried or ground, in bags.

Shells, clam, mussel or oyster:

Crushed or ground, in bulk in bags, barrels, or boxes.

Not crushed nor ground, in bags, barrels, or boxes.

Sodium (soda), nitrate of (Chili saltpetre), in bags, or in bulk in barrels or boxes.

Soy (soja or soya) bean oil cake or oil cake meal, in bags.

Tankage:

Garbage, dry, in bags.

Tankage, N. O. I. B. N., in bags.

Tobacco, unmanufactured, stems, ground, in bags.

[fol. 37-55]

Appendix C

Distance	Memphis-Southwestern scales (No. 9702)		Carriers proposed scale		Shippers' proposed scale	
	Single line	Joint line	Single line	Joint line	Single line	Joint line
	Cents	Cents	Cents	Cents	Cents	Cents
5 miles	100	120	90	...	80	...
10 miles	100	130	102	136	90	120
15 miles	110	130	124	158	100	130
20 miles	120	140	135	169	110	140
25 miles	130	150	147	181	120	150
30 miles	130	150	158	192	125	155
35 miles	140	160	158	192	130	160
40 miles	150	170	169	203	135	165
45 miles	160	180	180	203	140	170
50 miles	160	180	180	214	145	175
55 miles	170	190	192	214	150	180
60 miles	180	200	203	225	155	185
65 miles	180	200	203	237	160	190
70 miles	190	210	214	237	165	195
75 miles	190	210	214	248	170	200
80 miles	200	220	225	259	175	205
85 miles	210	230	237	259	180	210
90 miles	210	230	237	270	185	215
95 miles	220	240	248	270	190	220
100 miles	230	250	259	282	195	225
105 miles	230	250	259	293	205	235
110 miles	240	260	259	293	205	235
120 miles	250	270	270	293	215	245
125 miles	260	280	270	304	225	255
130 miles	270	280	270	304	225	255
135 miles	270	290	282	315	235	265
140 miles	280	300	282	315	235	265
150 miles	290	310	293	327	245	275
160 miles	300	320	315	338	255	275
170 miles	310	330	315	349	265	285
180 miles	320	340	327	349	275	295
190 miles	330	350	327	360	285	305
200 miles	340	360	338	372	295	315
210 miles	350	370	349	372	305	325
220 miles	360	380	349	383	315	335
230 miles	370	390	360	383	325	345
240 miles	380	400	372	394	335	355
250 miles	390	410	372	405	345	365
260 miles	390	410	383	405	355	375
280 miles	410	430	394	428	365	385
300 miles	430	440	405	439	375	395
320 miles	440	460	428	450	385	405
340 miles	450	470	439	462	395	415
360 miles	460	480	450	484	405	415
380 miles	480	500	462	495	415	425
400 miles	490	510	484	507	425	435
425 miles	500	520	507	540	445	455
450 miles	510	530	518	552	455	465
475 miles	530	550	540	563	465	475
500 miles	540	560	552	574	475	485
525 miles	550	560	563	597	485	495
550 miles	570	570	574	608	495	495
575 miles	580	580	597	619	505	505
600 miles	590	590	608	630	515	515

Distance[1]	Memphis-Southwestern scales (No. 9702)		Carriers proposed scale		Shippers' proposed scale	
	Single line	Joint line	Single line	Joint line	Single line	Joint line
	Cents	Cents	Cents	Cents	Cents	Cents
625 miles	600	600	619	653	525	525
650 miles	610	610	630	664	535	535
675 miles	620	620	653	675	545	545
700 miles	630	630	664	687	555	555
725 miles	640	640	675	709	565	565
750 miles	650	650	687	720	575	575
775 miles	660	660	709	732	585	585
800 miles	670	670	720	743	595	595
825 miles	...	...	732	765	600	605
850 miles	...	...	743	774	605	605
875 miles	...	...	765	792	610	610
900 miles	...	...	777	801	615	615
925 miles	...	...	788	819	620	620
950 miles	...	...	799	837	625	625
975 miles	...	...	822	846	630	630
1,000 miles	...	...	833	855	635	635

[1] The mileage blocks are not in all cases uniform under all the scales shown. Up to 800 miles they are those used in No. 9702, the limit of that scale.

[fol. 37-56]

Appendix D

Southeastern Members of the American Short Line Railroad Association

Aberdeen & Rockfish Railroad Company.
Alabama, Florida & Gulf Railroad Company.
Alabama, Tennessee & Northern Railway.
Alabama & North Western Railroad.
Andalusia, Florida & Gulf Railway Company.
Atlantic & Western Railroad Company.
Atlantic & Yadkin Railway.
Bamberg, Erhardt & Walterboro Railroad Company.
Bennettsville & Cheraw Railroad Company.
Birmingham & Southeastern Railway Company.
Blue Ridge Railway.
Buffalo, Union-Carolina Railroad.
Carolina & Northwestern Railway Company.
Charlotte Harbor & Northern Railway.
Charlotte, Monroe & Columbia Railroad.
Chattahoochee Valley Railway Company.
Chesterfield and Lancaster Railroad Company.
Collins & Glennville Railroad Company.
Columbia, Newberry & Laurens Railroad Company.
Cumberland and Manchester Railroad Company.
Danville & Western Railway Company.
Dover and Southbound Railroad Company.
East Tennessee & Western North Carolina Railroad Company.
East and West Coast Railway.
Ellerbee & Eastern Railroad Company.
Fernwood, Columbia & Gulf Railroad Company.
Flemingsburg & Northern Railroad Company.
Flint River & Northeastern Railroad Company.
Florida Central & Gulf Railway.

Frankfort & Cincinnati Railway Company.
Garyville Northern Railroad Company.
Georgia, Ashburn, Sylvester & Camilla Railway.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Georgia & Florida Railway.
Gainesville & Northwestern Railroad Company.
Greene County Railroad Company.
Greenville & Northern Railway Company.
Hampton & Branchville Railroad Company.
High Point, Randleman, Asheboro & Southern Railroad.
High Point, Thomasville & Denton Railroad Company.
Kentucky & Tennessee Railway.
Lancaster & Chester Railway Company.
Laurinburg & Southern Railroad Company.
Lawndale Railway & Industrial Company.
Live Oak, Perry & Gulf Railroad Company.
Louisville & Wadley Railroad Company.
Macon, Dublin & Savannah Railroad Company.
The Martanna & Bloomstown Railroad Company.
Marion, Alma & Southbound Railroad Company.
Moore Central Railway.
Morgan & Fentress Railway Company.
Muscle Shoals, Birmingham & Pensacola Railway.
The Natchez, Columbia & Mobile Railroad Company.
The Northwestern Railroad of South Carolina.
Oneida & Western Railroad Company.
Pearl River Valley Railroad Company.
The Pickens Railroad Company.
[fol. 37-57] Raleigh & Charleston Railroad Company.
Savannah & Atlanta Railway.
Savannah & Statesboro Railway Company.
Shearwood Railway.
Statesboro Northern Railroad Company.
Sylvania Central Railway Company.
Tallulah Falls Railway Company.
Tampa and Gulf Coast Railroad Company.
Tampa & Jacksonville Railway Company.
Tampa Northern Railroad Company.
Tavares & Gulf Railroad.
Tennessee, Kentucky & Northern Railroad Company.
Townsville Railroad Company.
The Union Point & White Plains Railroad Company.
Wadley Southern Railway Company.
Ware Shoals Railroad Company.
Washington & Lincolnton Railroad Company.
Wellington & Powellsville Railroad Company.
Wrightsville & Tennille Railroad Company.
Yadkin Railroad Company.

Appendix E

Fourth section Applications Set for Hearing in Connection With This Proceeding

Filed by—	Application numbers
Aberdeen & Asheboro R. R. Co.	4309
Aberdeen & Rockfish R. R. Co.	600
Alabama & Vicksburg Ry. Co.	601
Alabama Great Southern R. R. Co.	542
Appalachicola Northern R. R. Co.	3794
Atlanta & West Point R. R. Co.	1024
Atlanta, Birmingham & Atlantic R. R. Co.	972

Filed by—	Application numbers
Atlantic & Western R. R. Co.	2639
Atlantic Coast Line R. R. Co.	703
Augusta Southern R. R. Co.	1546
Bennettsville & Cheraw R. R. Co.	224
Blue Ridge Ry. Co.	1545
Bonlee & Western Ry. Co.	609
Brimstone R. R. & Canal Co. (The)	4147
Brookhaven & Pearl River R. R. Co.	3618 4301
Cadiz R. R. Co.	1919
Carolina & Northwestern Ry.	60
Carolina, Clinchfield & Ohio Ry.	1478
Carolina, Clinchfield & Ohio Ry. of S. C.	1479
Central of Georgia Ry. Co.	1530
Charlotte Harbor & Northern Ry.	4149
Chattahoochee Valley Ry. Co.	1576
Chattanooga Southern R. R. Co.	540
Chesapeawe & Ohio Ry. Co. (The)	1747 1752 1756
Chesterfield & Lancaster R. R.	4023
Chicago, Memphis & Gulf R. R. Co.	1916
Cincinnati, Burnside & Cumberland River Ry.	3971
Cincinnati, New Orleans & Texas Pacific Ry. Co. (The)	3965 3966 3967 3968
Danville & Western Ry.	1544
Dover & Southbound R. R. Co.	1070
Durham & Charlotte R. R.	225
Durham & Southern Ry. Co.	1047
East Tennessee & Western North Carolina R. R. Co.	4144
Edgmoor & Manetta Ry. Co.	4503
Fernwood & Gulf R. R. Co	4302 1912
Fitzgerald, Ocilla & Broxton R. R. Co.	541
Flint River & Northeastern R. R.	222
Florida Central R. R. Co.	115
Florida East Coast Ry.	5095
Florida Ry. Co.	3979

Filed by—	Application numbers
Gainesville Midland Ry.	117
Georgia & Florida Ry.	789
Georgia, Florida & Alabama Ry. Co.	3692
Georgia Northern Ry. Co.	221
Georgia R. R.	3918
Georgia Southern & Florida Ry. Co.	2029
Georgia Southwestern & Gulf R. R. Co.	4048
Greenville & Knoxville Ry.	1542
Gulf & Ship Island R. R. Co.	484
Gulf Line Ry. Co.	890
Harriman & Northeastern R. R. Co.	3975
Hartwell Ry.	1543
Illinois Central R. R. Co.	2045
Jackson R. R. Co. (The)	1915
Kentucky Midland R. R. Co.	3580
Kentwood & Eastern Ry. Co.	1986
Kinston & Snow Hill R. R. Co.	1076
Kinston, Carolina R. R. & Lumber Co.	1069
Knoxville, Sevierville & Eastern Ry. Co.	1541
Lancaster & Chester Ry. Co.	1540
Lawndale Ry.	3973
Lexington Terminal R. R. Co.	3915
Little River R. R. Co.	1538
Live Oak, Perry & Gulf R. R.	107
Louisville & Nashville R. R. Co.	1952
Louisville, Henderson & St. Louis Ry. Co.	1065
Macon & Birmingham Ry. Co.	2234
Macon, Dublin & Savannah R. R.	782
Mississippi Central R. R. Co.	1555
Mobile & Ohio R. R. Co.	2138
Monroe R. R. Co.	3916
Mount Airy & Eastern Ry. Co.	1483
Nashville, Chattanooga & St. Louis Ry. (The)	458
Natchez, Columbia & Mobile R. R. Co.	1918
New Orleans & Northeastern R. R.	601
New Orleans Great Northern R. R. Co.	4297
New Orleans, Mobile & Chicago R. R. Co. (The)	4948
New Orleans, Natalbany & Natchez Ry. Co.	3930
Norfolk & Western Ry. Co.	1561

Filed by—	Application numbers
Norfolk Southern R. R. Co.	1074
Northampton & Hartford Ry.	4502
North & South Carolina Ry. Co.	4672
[fol. 37-58] Northern Alabama Ry. Co	1537
Ocilla, Pinebloom & Valdosta R. R. Co.	2023
Ohio & Kentucky Ry. Co.	4919
Overton County R. R. and Geo. A. Clark, Rec.	3933
Pickens R. R.	1536
Piedmont Ry. Co.	1535
Raleigh & Charleston R. R. Co.	3927
Raleigh & Southport Ry. Co.	1030
Roanoke River Ry.	3925
St. Louis & San Francisco Ry	799 2346 2353
St. Marys & Kingsland R. R. Co.	4642
Sanford & Troy R. R. Co.	220
Savannah & Statesboro Ry. Co.	3931
Seaboard Air Line Ry.	1573
Smithsonia & Dunlap R. R.	4920
South Carolina Western Ry. Co.	5021
South Georgia Ry. Co.	62
Southern Ry. Co.	1548
Southern Ry. Co. in Mississippi	2222
Tallahassee & Montgomery Ry. Co.	1022
Tallulah Falls Ry.	1534
Tampa & Jacksonville Ry. Co.	4641
Tampa Northern R. R. Co.	3548
Tennessee & North Carolina R. R. Co.	3662
Tennessee Ry. Co.	3968
Tombigbee Valley R. R. Co.	1533
Tuskegee R. R. Co.	1023
Union & Glen Springs R. R. Co.	3813
Union Point & White Plains R. R. Co.	3917
Union Springs & Northern Ry. Co.	1476
Virginia & Southwestern Ry. Co.	945
Virginia Ry. Co. (The)	927

Filed by—	Application numbers
Ware Shoals R. R. Co.	2981
Western Railway of Alabama (The)	1021
Yazoo & Mississippi Valley R. R. Co. (The)	2043
A. D. Hall, Agent	1613

[fol. 37-59] At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 19th Day of July, A. D. 1926.

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Orders

It appearing, That by order dated October 7, 1924, the commission entered upon an investigation upon its own motion under Docket No. 16295, to which investigation the carriers named in the appendix hereto were made respondents, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before January 1, 1927, and thereafter to abstain, from publishing, demanding, or collecting their present interstate rates for the transportation of mixed fertilizers, and fertilizer materials as described in Appendix B to the report herein, between all points located in the territory described in Appendix A to said report, to the extent that such rates are found in and by such report to be unreasonable.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate com-

merce act, and thereafter to maintain for, and apply to, the interstate transportation, in carloads, of mixed fertilizers and fertilizer materials as described in Appendix B to the report herein from and to all points in the territory described in Appendix A to said report, rates in amounts per ton of 2,000 pounds which shall not exceed those shown in the table below, such rates to be subject to a minimum carload weight of 40,000 pounds in the case of mixed fertilizers, and to minimum carload weights not less in any instance than the present minimum nor less than 40,000 pounds in the case of fertilizer materials, with the exception [fol. 37-60] that the minimum for cottonseed hulls shall be 30,000 pounds: Provided, however, That in applying such rates to the longer hauls said respondents may for purposes of tariff simplification, subject to the approval of the commission, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups:

	Rate, cents
10 miles and under	100
15 miles and over 10	110
20 miles and over 15	120
25 miles and over 20	125
30 miles and over 25	135
35 miles and over 30	140
40 miles and over 35	150
45 miles and over 40	155
50 miles and over 45	165
55 miles and over 50	170
60 miles and over 55	180
65 miles and over 60	185
70 miles and over 65	195
75 miles and over 70	200
80 miles and over 75	205
85 miles and over 80	210
90 miles and over 85	215
95 miles and over 90	220
100 miles and over 95	225
110 miles and over 100	235
120 miles and over 110	245

	Rate. cents
130 miles and over 120	255
140 miles and over 130	265
150 miles and over 140	275
160 miles and over 150	285
170 miles and over 160	295
180 miles and over 170	305
190 miles and over 180	315
200 miles and over 190	320
210 miles and over 200	330
220 miles and over 210	335
230 miles and over 220	345
240 miles and over 230	350
250 miles and over 240	360
260 miles and over 250	365
270 miles and over 260	375
280 miles and over 270	380
300 miles and over 280	395
320 miles and over 300	410
340 miles and over 320	425
360 miles and over 340	440
380 miles and over 360	450
400 miles and over 380	460
420 miles and over 400	470
440 miles and over 420	480
460 miles and over 440	490
480 miles and over 460	500
500 miles and over 480	505
520 miles and over 500	515
540 miles and over 520	525
560 miles and over 540	535
580 miles and over 560	545
600 miles and over 580	555
620 miles and over 600	565
640 miles and over 620	575
660 miles and over 640	585
680 miles and over 660	595
700 miles and over 680	605
720 miles and over 700	615
740 miles and over 720	620

	Rate, cents
760 miles and over 740	630
780 miles and over 760	635
800 miles and over 780	645
825 miles and over 800	655
850 miles and over 825	665
875 miles and over 850	675
900 miles and over 875	685
925 miles and over 900	695
950 miles and over 925	705
975 miles and over 950	715
1,000 miles and over 975	725

In computing distances for the application of the foregoing rates, the shortest routes shall be used over which carload traffic can be moved without transfer of lading.

It is further ordered, That the said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for, and apply to, the interstate transportation in carloads of mixed fertilizers and fertilizer materials between points on the so-called short or weak lines set forth in Appendix D to the report herein, including points on the lines of the Columbus & Greenville Railway Company, the Kinston-Carolina Railroad Company, the Carolina Railroad Company, the Gulf, Mobile & Northern Railroad Company, the Birmingham & North- [fol. 37-61] western Railway Company, and the Atlanta, Birmingham & Atlantic Railway Company, so long as said carriers remain independent of standard-line control, and between such points and points in the territory described in Appendix A to said report located on standard lines, excepting only the Norfolk Southern Railroad and such short or weak lines as may be under a common control or management with a standard line, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for and apply to the interstate transportation in carloads of mixed fertilizers and fertilizer materials between points on the line of the Norfolk Southern Railroad Company and between such point and points on standard lines in the territory set forth in Appendix A to the report herein, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 10 per cent, and in no case by any greater amount than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for and apply to the interstate transportation in less than carloads of mixed fertilizers and fertilizer materials from and to all points in the territory described in Appendix A to said report, rates which shall not exceed 130 per cent of the corresponding rates hereinbefore prescribed for carload movements.

And it is further ordered, That this order shall remain in force and effect until the further order of this commission.

Fourth Section Order No. 9346

By the fourth section applications as set forth in Appendix E to the report in Docket No. 16295, Fertilizers and Fertilizer Materials Between Southern Points, carriers parties thereto ask, among other things, for authority to continue to charge rates for the transportation of fertilizers [fol. 37-62] and fertilizer materials between points in the

territory hereinafter described, without observing the long-and-short-haul provision of the fourth section of the interstate commerce act. A hearing having been held on the said applications in so far as they relate to the rates hereinafter described, and full investigation of the matters and things involved therein having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That, except as hereinafter otherwise provided, carriers parties to the said applications and other carriers respondents in said Fertilizers and Fertilizer Materials Between Southern Points, having circuitous lines or routes from and to competitive points be, and they are hereby, authorized to establish and maintain over all lines or routes from any point of origin to any point of destination within the territory considered in the report made a part hereof, and as more fully described in Appendix A to the said report, the lowest rates prescribed in the said report for the transportation of fertilizers, and fertilizer materials as described in Appendix B to the said report, as maximum rates over any line or route between said points, and to maintain higher rates from, to, and between intermediate points: Provided, That the rates from, to, and between said intermediate points shall not exceed the scale of rates prescribed in the said report as maximum rates for application at such intermediate points and shall in no case exceed the lowest available combination. .

It is further ordered, That the Columbus & Greenville Railway Company, Kinston Carolina Railroad Company, Carolina Railroad Company, Gulf, Mobile & Northern Railroad Company, Birmingham & Northwestern Railway Company, and the Atlanta, Birmingham & Atlantic Railway Company, and the other short and weak line carriers shown in Appendix D to the aforesaid report made a part hereof, and their interested connections, parties to the aforesaid applications, be, and they are hereby, authorized to establish and maintain rates for the transportation of fertilizers and fertilizer materials, as hereinbefore described between

junction points on their lines and points in the territory hereinbefore referred to, the same as the rates contemporaneously maintained on like traffic between the same points by their standard-line competitors, and to maintain higher rates from and to intermediate points on the said short and weak lines: Provided, That rates at the said intermediate points shall in no case exceed the distance scale of rates prescribed in the aforesaid report made a part hereof plus a differential of 50 cents per ton of 2,000 pounds, and shall in no case exceed the lowest available combination.

[fol. 37-63] It is further ordered, That the Norfolk Southern Railroad and its interested connections, parties to the aforesaid applications, be, and they are hereby, authorized to establish and maintain rates for the transportation of fertilizers and fertilizer materials as hereinbefore described, between junction points on the line of the said Norfolk Southern Railroad and points in the territory hereinbefore referred to, the same as the rates contemporaneously maintained on like traffic between the same points by its standard line competitors, and to maintain higher rates from and to intermediate points on the said Norfolk Southern Railroad: Provided, That rates at the said intermediate points shall in no case exceed the distance scale of rates prescribed in the aforesaid report made a part hereof by more than 10 per cent, and in no case by any greater amount than 50 cents per ton of 2,000 pounds, and shall in no case exceed the lowest combination.

It is further ordered, That the relief hereinbefore authorized shall be subject to the limitations of a rule in substantially the following form to be incorporated in the tariffs publishing the rates herein referred to:

The rates named in this tariff between any two points apply via all routes composed of lines parties to the tariff over which the distances do not exceed those shown in column 2 below opposite the corresponding rates shown in column 1.

Column 1, rates per 100 pounds	Column 2, distances
Cents	Miles
100	17
110	25
120	34
125	42
135	51
140	59
150	68
155	76
165	85
170	93
180	102
185	110
195	119
200	127
205	136
210	144
215	153
220	161
225	170
235	187
245	204
255	221
265	238
275	255
285	240
295	255
305	270
315	285
320	300

(To be continued at same progression as that of scale.)

And it is further ordered, That, except as hereinbefore authorized, all other and further relief prayed for by the aforesaid applications respecting rates on the traffic hereinbefore described, be, and the same is hereby, denied, effective January 1, 1897.

By the commission.

——— ———, Secretary.

[fol. 37-64] Aberdeen and Rockfish Railroad Company; Alabama Central Railroad Company; Alabama Central Railway; The Alabama Great Southern Railroad Company; Alabama Northern Railway Company and R. L. Schuessler, Receiver; Alabama, Tennessee & Northern Railroad Corporation; Alabama and North Western Railroad Company; The Alabama and Vicksburg Railway Company; Albany Southern Railroad Company; Albemarle Steam Navigation Company; Alcolu Railroad Company; The Andalusia, Florida and Gulf Railway Company; Appalachian Railway Company; Appalachicola Northern Railroad Company; Asheville Southern Railway Company; The Asheville and Craggy Mountain Railway Company; Atlanta, Birmingham & Atlantic Railway Company and B. L. Bugg, Receiver; The Atlanta, Stone Mountain & Lithonia Railway Company; Atlanta & St. Andrews Bay Railway Company; Atlanta and West Point Railroad Company; Atlantic Coast Line Railroad Company; Atlantic and Yadkin Railway Company and A. E. Smith and J. W. Fry, Receivers; Augusta-Aiken Railway & Electric Corporation; Augusta Northern Railway; Augusta and Summerville Railroad Company; Augusta-Savannah Line (M. H. Rowse and E. J. Black, owners); Baltimore & Carolina Steamship Company of Baltimore City; The Baltimore & Ohio Railroad Company; The Baltimore & Virginia Steamboat Company; Bamberg, Ehrhardt & Walterboro Railway Company; Batesville Southwestern Railroad Company, Estate of R. J. Darrell, Lessee; Belt Railway Company of Chattanooga; Bennett's North Carolina Line; Bennettsville and Cheraw Railroad Company; Birmingham Belt Railroad Company; Birmingham, Columbus & St. Andrews Railroad Company, and S. A. Alford, Receiver; Birmingham and Northwestern Railway Company; Birmingham, Selma and Mobile Railroad Company; Birmingham Southern Railroad Company; Birmingham & Southeastern Railway Company, and Winton M. Blount, and John T. Cochrane, Receivers; Black Mountain Railroad Company; Blue Ridge Railway Company; Bonlee & Western Railway Company; Bowdon Railway Company; Buffalo, Union Carolina Railroad; Buxton Line, Incorporated; Cadiz Railroad Company; Caloosahatchie River Steamboat Company; Carolina Railroad Company; Carolina, Clinchfield and Ohio Railway; Carolina, Clinchfield

and Ohio Railway of South Carolina; Carolina & Northeastern Railroad Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; Carolina Western Railroad; Carrollton & Worthville Railroad Company; Cashie River Line; Central of Georgia Railway Company; Charleston & Western Carolina Railway Company; Charlotte Harbor and Northern Railway Company; The Charlotte, Monroe and Columbia Railroad Company; Chattahoochie Valley Railway; Chesapeake Western Railway; The Chesapeake and Ohio Railway Company; Chesterfield and Lancaster Railroad Company; Chicago, Memphis & Gulf Railroad Company; Cincinnati, Burnside & Cumberland River Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Cliffside Railroad Company; Clyde Steamship Company; Collins & Glenville Railroad Company; Columbia, Newberry & Laurens Railroad Company; Columbus and Greenville Railway Company; Cumberland Railway Company; The Cumberland Railroad Company, and J. R. Campbell, Receiver; Cumberland Transportation Company; Cumberland & Manchester Railroad Company; Danville and Western Railway Company; DeKalb & Western Railroad Company; The Dover and South Bound Railroad Company; Durham and Southern Railway Company; East Carolina Railway; The East Tenessee and Western North Carolina [fol. 37-65] Railroad Company; East and West Coast Railway; Eastern Carolina Transportation Company; Edgemoor & Manetta Railway Company; Ensley Southern Railway Company; Elkin & Allegheny Railroad Company; The Evansville & Bowling Green Packet Company; Fernwood, Columbia & Gulf Railroad Company; Flemingsburg & Northern Railroad Company; Flint River and Northeastern Railroad Company; Florida Central and Gulf Railway; Florida East Coast Railway Company; Frankfort and Cincinnati Railway Company; French Broad Railroad Company; Gainesville Midland Railway and Gordon C. Carson and W. B. Veazey, Receivers; Gainesville & Northwestern Railroad Company; Garyville Northern Railroad Company; Georgia Railroad; Georgia, Ashburn, Sylvester & Camilla Railway Company; Georgia, Florida and Alabama Railway Company; The Georgia Northern Railway Company; Georgia Southern and Florida Railway Company; The

Georgia Southwestern and Gulf Railroad Company; Georgia and Florida Railway, and John Skelton Williams, Receiver; Greene County Railroad Company; Greenville and Northern Railway Company; Gulf, Mobile and Northern Railroad Company; Gulf and Ship Island Railroad Company; Gulf and Southern Steamship Company; Gulfport and Mississippi Coast Traction Company; Hampton & Branchville Railroad and Lumber Company; Harriman and Northeastern Railroad Company; Hartwell Railway Company; High Point, Randleman, Asheboro and Southern Railroad Company; High Point, Thomasville & Denton Railroad Company; Illinois Central Railroad Company; Independent Line Steamers; Interstate Railroad Company; Jackson & Eastern Railway Company; Kentucky & Indiana Terminal Railroad Company; Kentucky & Tennessee Railway; Kentucky, Rockcastle & Cumberland Railroad Company; The Kinston Carolina Railroad Company; Knoxville & Carolina Railroad Company; Kissimmee River Railway; Kosciusko & South Eastern Railroad Company; Lancaster and Chester Railway Company; Laurel Fork Railway Company; Laurinburg & Southern Railroad Company; Lawndale Railway and Industrial Company; Linville River Railway Company; The Little River Railroad Company; Live Oak, Perry and Gulf Railroad Company; Loranger, Louisiana & Northeastern Railroad Company, and A. Loranger, Receiver; Louisiana Railway & Navigation Company; Louisville, Henderson and St. Louis Railway Company; Louisville, New Albany & Corydon Railroad Company; Louisville and Nashville Railroad Company; Louisville and Wadley Railroad Company; Macon, Dublin and Savannah Railroad Company; Mammoth Cave Railroad Company; Manistee & Repton Railroad Company, Inc., Manteo Norfolk Transportation Company; The Marianna & Blountstown Railroad Company; Marion & Rye Valley Railway Company; Marion and Southern Railroad Company; Maxton, Alma and Southbound Railroad Company; Merchants & Miners Transportation Company; Milltown Air Line Railway; Milstead Railroad Company; Mississippi & Alabama Railroad Company; Mississippian Railway; Mississippi Central Railroad Company; Mississippi Eastern Railway Company; Mississippi Export Railroad Company; Mississippi Southern Railroad; Mississippi Warrior Serv-

ice; Mississippi & Western Railroad Company; Mobile and Ohio Railroad Company; Moore Haven and Clewiston Railway Company; Morgan & Fentress Railway Company; Muscle Shoals, Birmingham & Pensacola Railway Company; Nashville & Atlantic Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Nashville Interurban Railway; Natchez, Columbia & Mobile Railroad Company; Natchez & Southern Railway Company; Nelson & Albemarle Railway Company; The New Holland, Higginsport & Mt. Vernon Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany and [fol. 37-66] Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; New Orleans and Northeastern Railroad Company; Norfolk Southern Railroad Company; Norfolk & Mobjack Bay Steamboat Company; Norfolk and Portsmouth Belt Line Railroad Company; Norfolk and Washington Steamboat Company; Norfolk and Western Railway Company; Northern Alabama Railway Company; North River Line, Inc., North Western Railroad Company of South Carolina; Norton and Northern Railway; Ocean Steamship Company of Savannah; Ohio & Kentucky Railway Company; Oneida & Western Railroad Company; Paducah & Illinois Railroad Company; Palatka & Jacksonville Steamboat Line; Pearl River Transportation Company; Pearl River Valley Railroad Company; Peninsular and Occidental Steamship Company; The Pennsylvania Railroad Company; Pensacola, St. Andrews and Gulf Steamship Company; The Pickens Railroad Company; Piedmont and Northern Railway Company; Pigeon River Railroad Company; Pontchartrain Railroad Company; Raleigh and Charleston Railroad Company; Randolph and Cumberland Railway Company and J. S. Crews, Receiver; Richmond, Fredericksburg and Potomac Railroad Company; Roanoke Railway Company; Roanoke River Steamboat Company; Rockcastle River Railway Company; Rockingham Railroad Company; Rome & Northern Railway Company; Rosslyn Connecting Railroad Company; St. Johns River Terminal Company; St. Louis-San Francisco Railway Company; St. Louis & Tennessee River Packet Company; St. Marys Railroad Company; Salmon Creek Line; Sandersville Railroad Company; The Sardis and

Delta Railroad Company; Savannah and Atlanta Railway, and Charles E. Gay, Jr., and Thomas B. Felder, Receivers; Savannah and Statesboro Railway Company; Seaboard Air Line Railway Company; Shearwood Railway Company; The Sievern & Knoxville Railroad Company; Smithfield, Newport News & Norfolk Steamship Company; Smithonia & Dunlap Railroad Company; Smoky Mountain Railway Company; The South Georgia Railway Company; Southern Railway Company; State University Railroad Company; Statesboro Northern Railway (Georgia & Florida Railway, John Skelton Williams, Receiver, Lessee); Sumpter & Choctaw Railway Company; Sylvania Central Railway Company; Talbotton Railroad Company; Tallulah Falls Railway Company, and J. F. Gray, Receiver; Tampa Northern Railroad Company; Tampa Southern Railroad Company; Tampa & Gulf Coast Railroad Company; Tampa & Jacksonville Railway Company; Tampa-St. Petersburg Transportation Company; Tavares & Gulf Railroad; Tennessee & Carolina Southern Railway Company; Tennessee Railroad Company; Tennessee, Alabama and Georgia Railroad Company; Tennessee Central Railway Company; Tennessee, Kentucky & Northern Railroad Company; Tennessee River Navigation Company; Tennessee and North Carolina Railway Company; Tennessee Western Railroad Company; Thronateeska Navigation Company; The Townsville Railroad Company; Tri-State Navigation Company; Tuckaseegee & Southeastern Railway Company; Tuskegee Railroad Company; Union Railway Company (Memphis, Tenn.); The Union Point and White Plains Railroad Company; Virginia Blue Ridge Railway Company; Virginia Southern Railroad Company; Virginia Steamship Company; Virginia and Carolina Southern Railroad Company; The Virginian Railway Company; Waccamaw Transportation Company; Wadley Southern Railway Company; Wanchese Line; Ware Shoals Railroad; Warrenton Rail Road Company; Washington-Virginia Railway Company; Washington and Choctow Railway Company; Washington & Lincolnton Railroad Company; Washington and Old Dominion Railway; Washington and Vandemere Railroad Company; Wayeross and Southern Railroad Company; Wayeross & [fol. 37-67] Western Railroad Company; Wellington & Powellsville Railroad Company; The Western Railway of

Alabama; Wilmington, Brunswick & Southern Railroad Company; Winston-Salem Southbound Railway Company; Wrightsville & Tennile Railroad Company; Yadkin Railroad Company; The Yazoo and Mississippi Valley Railroad Company.

[fol. 38-1] EXHIBIT NO. 2 TO ANSWER OF THE UNITED STATES—Filed January 12, 1928

EXHIBIT NO. 2

12163

INTERSTATE COMMERCE COMMISSION

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Decided April 4, 1927

Upon further consideration, found:

1. That various other short or weak line carriers in the Southeast may be accorded the same measure of relief as originally given to this class of carriers in our previous report herein, 113 I. C. C. 389.
2. That the relief granted by fourth-section No. 9346 should be somewhat broadened with respect to the so-called short or weak line carriers.
3. That the Nashville, Chattanooga & St. Louis Railway may add 50 miles as constructive mileage for the river crossing between Hobb's Island and Gunters Landing, Ala.

J. F. Dalton for Norfolk Southern Railroad Company; Henry Thurtell for Nashville, Chattanooga & St. Louis Railway; and J. A. Streyer for members of American Short Line Railroad Association.

J. O. Gill for Jackson & Eastern Railroad Company; G. W. Zipperer for Apalachicola Northern Railroad Company; W. B. Veazey for Gainesville Midland Railway; E. C. Ash for Mississippian Railway; G. C. Dougherty for Milltown Air Line Railway; J. P. White for Cadiz Railroad

Company; LeRoy Morris for Mississippi Central Railroad Company; G. C. Baggett for Washington & Old Dominion Railway; and A. D. Strobhar for St. Marys Railroad Company.

Supplemental Report of the Commission on Further Consideration

EASTMAN, Commissioner:

In our previous report herein, 113 I. C. C. 389, we prescribed a distance scale of rates for the transportation of fertilizers and fertilizer materials over standard lines in southern territory, and, with certain exceptions, authorized an arbitrary of 50 cents per net ton to be added to the standard-line rates between points on certain so-called short or weak lines which we named of record and between points on those lines and points on standard lines, the arbitraries to accrue solely to the short or weak line carriers.

The American Short Line Railroad Association, by petition, now requests similar authority in the case of other short or weak lines, set forth in Appendix DD hereto, which [fol. 38-2] were overlooked in the presentation of the evidence respecting this character of carriers. It is claimed that the testimony of record with respect to short or weak lines applies with equal force to these additional lines and that their financial and traffic conditions are such as to warrant the higher rates sought.

The Washington & Old Dominion Railway, the Apalachicola Northern Railroad, the Mississippian Railway, the Gainesville Midland Railway, the Cadiz Railroad, the Milltown Air Line Railway, the Mississippi Central Railroad, the St. Marys Railroad, and the Jackson & Eastern Railway also ask similar authority and for the same reasons.

The American Short Line Railroad Association, including the Norfolk Southern, further petitions for a revision of fourth-section order No. 9346 hereinbefore entered, so as to allow a somewhat greater degree of relief from the provisions of that section of the act than was granted. The order as now drawn authorizes these short-line carriers to maintain rates "between junction points" on their lines and points generally in the territory involved, the same as the rates contemporaneously maintained between the

same points by their standard-line competitors. It is pointed out that as the rates between all points are to be determined by the shortest possible distances, in some instances the rates from and to local points on the short or weak lines will be made by routes giving these lines a minimum haul. They seek additional fourth-section relief so that in such instances they may participate in competitive routes which will afford them a longer haul, at the same time maintaining higher rates to and from intermediate points on their lines. They also seek similar relief so that they may participate as intermediary lines in competitive routes between points on standard lines.

All parties to the proceeding have been advised of these petitions, and no objection has been voiced by anyone. Neither were any of the additional short or weak lines referred to in these petitions denied the special treatment accorded that class of carriers in Southern Class Rate Investigation, 100 I. C. C. 513. Under the circumstances we believe that we are justified in granting the prayers of these petitions, including the general amendment of fourth-section order No. 9346. Should any objection be raised later to the relief thus granted, appropriate petition for further hearing may be made.

The Nashville, Chattanooga & St. Louis also petitions for authority to use 50 miles as the constructive mileage in determining rates over its route via Hobb's Island and Gunters Landing, Ala. On its Huntsville branch this carrier operates a car-float transfer of 20 miles along and across the Tennessee River between the points named, [fol. 38-3] and in the Southern Class Rate Investigation, supra, a constructive distance of 50 miles was authorized to be used between these points in determining distances and rates over this route. This carrier now seeks similar authority in this proceeding. The only reference made to this matter in the record is where, after mentioning the situation, the witness of the carrier was asked, "Do you propose to apply straight mileage on that branch, or are you going to have constructive mileage for the river crossing?" To which he replied, "It depends upon what we get from 13494 [Southern Class Rate Investigation]. The present proposal is straight mileage scale."

This petition has also been submitted to the parties of record, and no objection has been offered by anyone. On the strength, therefore, of what was done in the Southern Class Rate Investigation, there appearing to be no reason why the same exception should not be made in this case, we find that the Nashville, Chattanooga & St. Louis may use 50 miles as the constructive distances for the crossing referred to.

One other matter has been brought to our attention which should be made clear at this time. In our original report we allowed, as herein stated, an arbitrary of 50 cents per net ton to the so-called short or weak lines, and to the Norfolk Southern we gave authority to charge rates 10 per cent higher than the standard-line scale subject to a maximum of 50 cents per net ton. The question has arisen whether the 50-cent arbitrary can be added for each short line where two or more participate in a particular movement, and also whether, where both the Norfolk Southern and a short line participate in the route of movement, the 10 per cent over the standard-line scale and the 50-cent arbitray should both be added. A reading of the order entered makes it clear, we believe, that no authority is granted for the addition under any circumstances of more than 50 cents per net ton to the standard-line scale.

In its petition the Norfolk Southern further asks for fourth-section relief in connection with routes which exceed the limits of circuity prescribed in our original order. Other carriers have likewise sought similar additional relief, but in no instance have we made an exception as to the circuity of routes which may engage in the transportation under fourth-section relief. No sufficient reason for an exception has been presented in this case, and the request is therefore denied.

The orders previously entered herein will be amended in accordance with the foregoing conclusions.

Commissioner Campbell dissents.

[fol. 38-4] Appendix DD

The short lines for which relief is now sought are as follows: Alabama Central Railroad, Alcolu Railroad, Artemus & Jellico Railroad, Ashland Railway Company,

Alabama Central Railway, Appalachian Railway, Augusta Northern Railway, Batesville & Southwestern Railroad, Bonlee & Western Railway, Birmingham, Columbus & St. Andrews Railway, Big Sandy & Kentucky River Railway, Bowdon Railway, Birmingham, Selma & Mobile Railroad, Carolina & Northeastern Railway, Carolina and Georgia Railway Company, Carrollton & Worthville Railroad, Carolina Western Railroad, Cliffside Railroad, Chesapeake Western Railway, Cumberland Transportation Company, DeKalb & Western Railway, Due West Railway Company, Elkin & Allegheny Railroad Company, Edgemoor & Manetta Railroad Company, Fellsmere Railroad, Knoxville & Carolina Railroad Company, Kosciusko & Southeastern Railway, Kentucky Rockcastle & Cumberland Railroad, Louisiana Southern Railway Company, Laurel Fork Railway Company, Little River Railway, Mississippi and Alabama Railroad Company, Mississippi Southern Railroad, Mississippi & Western Railroad, Morehead & North Fork Railroad, Nashville & Atlantic Railroad Company, New Orleans, Natalbany & Natchez Railway, Ohio & Kentucky Railway Company, Pigeon River Railway, Rockcastle River Railway Company, Rockingham Railroad Company, Sanfordsville Railroad Company, Sardis & Delta Railroad, Smoky Mountain Railway, Sumter & Choctaw Railway, Talbotton Railway Company, Tennessee Railroad Company,Tuskegee Railroad, Tennessee & North Carolina Railroad, Tuckaseegee & Southeastern Railway, Wilmington, Brunswick and Southern Railway, Warrenton Railroad Company, Washington & Choctaw Railway, Waycross and Southern Railway, Virginia Blue Ridge Railway, and Virginia & Carolina Southern Railway.

[fol. 38-5] At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 4th Day of April, A. D. 1927

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Second Supplemental Order

Upon further consideration of the matters and things involved in the above-entitled proceeding and of the peti-

tions of certan carriers for modification and revision, in certain respects, of the orders entered herein under date of July 19, 1926, as amended by the first supplemental order dated November 23, 1926, and the commission having on the date hereof made and filed a supplemental report herein, which said supplemental report, together with the original report herein, is hereby referred to and made a part hereof:

It is ordered, That the following be, and the same is hereby, substituted for all of that part of said order of July 19, 1926, following the table of rates set forth on page 11 thereof, to wit:

In computing distances for the application of the foregoing rates, the shortest routes shall be used over which carload traffic can be moved without transfer of lading, except that 50 miles may be used as a constructive distance for the car-float transfer of the Nashville, Chattanooga & St. Louis Railway on the Tennessee River in Alabama between Hobb's Island and Gunters Landing.

It is further ordered, That the said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before July 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for, and apply to, the interstate transportation in carloads of mixed fertilizers and fertilizer materials between points in the territory described in Appendix A to the original report herein on, or via, the so-called short or weak lines set forth in Appendix D to the original report and in Appendix DD to the supplemental report herein, including the Columbus & Greenville Railway Company, the Kinston-Carolina Railroad Company, the Carolina Railroad Company, the Gulf, Mobile & Northern Railroad Company, the Birmingham & Northwestern Railway Company, the Atlanta, Birmingham & Atlantic Railway Company, the Washington & Old Dominion Railway, the Apalachicola Northern Railroad, the Mississippian Railway, the Gainesville Midland Railway, the Milltown Air Line Railway, the Cadiz Railroad, the [fol. 38-6] Mississippi Central Railroad, the St. Marys Railroad, and the Jackson & Eastern Railway, so long as

said carriers remain independent of standard-line control, excepting only the Norfolk Southern Railroad and such short or weak lines as may be under common control or management with a standard line, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before July 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for, and apply to, the interstate transportation in carloads of mixed fertilizers and fertilizer materials between points on, or via, the line of the Norfolk Southern Railroad in the territory set forth in Appendix A to the original report herein, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 10 per cent, and in no case by any greater amount than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before July 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for, and apply to, the interstate transportation in less than carloads of mixed fertilizers and fertilizer materials from and to all points in the territory described in Appendix A to said report, rates which shall not exceed 130 per cent of the corresponding rates hereinbefore prescribed for carload movements.

And it is further ordered, That the said order of July 19, 1926, as herein amended, and as amended by the first supplemental order dated November 23, 1926, shall remain in full force and effect until the further order of this commission.

Second Supplemental Fourth-Section Order No. 9346

Upon further consideration of the matters and things involved in the fourth-section applications set forth in Appendix E to the original report in Docket No. 16295, Fertilizers and Fertilizer Materials Between Southern Points, 113 I. C. C. 389, and of the petitions of various respondents for a modification of fourth-section order No. 9346 entered July 19, 1926, in said proceeding, as amended by first supplemental fourth section order No. 9346 of November 23, 1926:

It is ordered, That said fourth-section order No. 9346 be amended to read as follows:

It is ordered, That, except as hereinafter otherwise provided, carriers parties to the said applications set forth [fol. 38-7] in Appendix E to the original report in Docket No. 16295, and other carriers respondents in said docket, having circuitous lines or routes between points in the territory described in Appendix A to said original report, which said report is hereby referred to and made a part hereof, be, and they are hereby, authorized to establish and maintain over such circuitous lines or routes the lowest rates prescribed in said original report for the transportation of fertilizers and fertilizer materials as maximum rates between said points, and to maintain higher rates from, to, and between intermediate points; Provided that the rates from, to, and between the intermediate points affected shall not exceed the scale of rates prescribed in said original report as maximum rates for application at such intermediate points, and shall in no case exceed the lowest available combination.

It is further ordered, That the Columbus & Greenville Railway Company, Kinston-Carolina Railroad Company, Carolina Railroad Company, Gulf, Mobile & Northern Railroad Company, Birmingham & Northwestern Railway Company, Atlanta, Birmingham & Atlantic Railway Company, Washington and Old Dominion Railway, Apalachicola Northern Railroad, Mississippian Railway, Gainesville Midland Railway, Milltown Air Line Railway, Cadiz Railroad, Mississippi Central Railroad, St. Marys Railroad, and the

Jackson & Eastern Railway, and the other short and weak line carriers set forth in Appendix D to the original report and Appendix DD to the supplemental report in Docket No. 16295, which said reports are hereby referred to and made a part hereof, and their interested connections, parties to the aforesaid applications, be, and they are hereby, authorized to establish and maintain rates for the transportation of fertilizers and fertilizer materials between all points in the territory described in Appendix A to said original report the same as the rates contemporaneously maintained on like traffic between the same points via competing lines or routes, and to maintain higher rates from, to, and between intermediate points on the said short or weak lines: Provided that rates at the said intermediate points shall in no case exceed the distance scale of rates prescribed in the said original report plus a differential of 50 cents per ton of 2,000 pounds, and shall in no case exceed the lowest combination.

It is further ordered, That the Norfolk Southern Railroad and its interested connections be, and they are hereby, authorized to establish and maintain rates for the transportation of fertilizers and fertilizer materials between all points in the territory described in Appendix A to the said original report the same as the rates contemporaneously maintained on like traffic between the same points via competing routes and to maintain higher rates from, to, and between intermediate points on the line of said Norfolk Southern Railroad and the line or lines of any short or weak line carrier participating in the route: Provided that rates at the said intermediate points shall not exceed the distance scale of rates prescribed in the said original report by more than 10 per cent, subject to a maximum of 50 cents per ton of 2,000 pounds when the Norfolk Southern Railroad alone participates in the movement or in connection with standard-line carriers; and Provided further that the rates at the said intermediate points shall in no case exceed said distance scale of rates by more than 50 cents per ton of 2,000 pounds, and shall in no case exceed the lowest combination.

[fol. 38-8] It is further ordered, That the relief hereinbefore authorized shall be subject to the limitations of a rule in substantially the following form to be incorporated in the tariffs publishing the rates herein referred to:

The rates named in this tariff between any two points apply via all routes composed of lines parties to the tariff over which the distances do not exceed those shown in column 2 below opposite the corresponding rates shown in column 1.

Column 1, rates per ton of 2,000 pounds	Column 2, distances, miles
100 cents	17
110 cents	25
120 cents	34
125 cents	42
135 cents	51
140 cents	59
150 cents	68
155 cents	76
165 cents	85
170 cents	93
180 cents	102
185 cents	110
195 cents	119
200 cents	127
205 cents	136
210 cents	144
215 cents	153
220 cents	161
225 cents	170
235 cents	187
245 cents	204
255 cents	221
265 cents	238
275 cents	255
285 cents	255
295 cents	255
305 cents	270
315 cents	285
320 cents	300

(To be continued at same progression as that of scale.)

And it is further ordered, That, except as hereinbefore authorized, all other and further relief prayed for by the aforesaid applications respecting rates on the traffic hereinbefore described, be, and the same is hereby, denied, effective July 1, 1927.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 39] Exhibit No. 3, to Answer of the United States—Filed January 12, 1928

[fol. 39-1] Exhibit No. 3

12505

Interstate Commerce Commission

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Decided July 5, 1927

Upon further consideration, found:

1. That fourth-section order No. 9346 should be amended to authorize carriers operating circuitous routes to meet the rates of the direct lines and to maintain higher rates from and to intermediate points although such rates may exceed the scale prescribed in our original report, 113 I. C. C. 389, if strictly applied.
2. That the petition of the Carolina Railroad for relief from the long-and-short-haul provision of the fourth section with respect to rates to Snow Hill, N. C., should be denied.
3. That the Nelson & Albemarle Railway Company, the Linville River Railway Company, and the Atlanta & St. Andrews Bay Railway Company should be permitted to charge rates 50 cents per ton in excess of the standard-line scale prescribed in our original report.

4. That the petitions of the Louisville & Nashville on behalf of the Glasgow Railway Company and the Elkton & Guthrie Railroad Company for authority to charge 50 cents per ton in excess of the standard-line scale should be denied.

B. G. Brown and Charles Barham for various southeastern carriers; J. F. Dalton for Carolina Railroad Company; James Menzies for Atlantic Coast Line Railroad Company; J. A. Streyer for Nelson & Albemarle Railway Company and Linville River Railway; H. W. Wolf for Atlanta & St. Andrews Bay Railway Company; and E. A. de Funiak for Glasgow Railway Company and Elkton & Guthrie Railroad Company.

Second Supplemental Report of the Commission on Further Consideration

EASTMAN, Commissioner:

In our original report herein, 113 I. C. C. 389, we prescribed a distance scale of rates on fertilizers and fertilizer materials within southern territory, and said, at page 424:

* * * in applying such rates to the longer hauls the respondent carriers may for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups.

It appears that in the maintenance of groups under the foregoing authority, the rates between various points will be somewhat higher than they would be if the scale were [fol. 39-2] strictly applied on a point-to-point basis. Such departures from the scale were forbidden in fourth-section order No. 9346, issued in connection with our original report, and the carriers now ask that that order may be amended so that it will not interfere with the grouping plan. No objection to such an amendment has come to our attention, and in order that reasonable groupings may be maintained some leeway in this respect seems to be necessary. We note, however, that in quite a number of instances the rates will exceed the strict scale basis by as much as 20 cents per ton, and in a few instances by still

greater amounts. This goes beyond what we understood would be the limit of departure from the scale, and beyond what seems to be reasonably necessary.

Fourth-section order No. 9346 will be amended to permit the maintenance of rates from and to intermediate points on circuitous routes in excess of the scale basis strictly applied, but subject, however, to the limitation that on and after September 20, 1927, such rates shall not exceed the scale basis by more than 15 cents per ton.

The Carolina Railroad, a company controlled through stock ownership by the Norfolk Southern, extends from Kingston, N. C., its junction with the Norfolk Southern, and the Atlantic Coast Line, 15 miles northwesterly to Snow Hill, N. C., its terminus. Six miles to the east is the line of the East Carolina Railway, which reaches this section from the north and connects with the Norfolk Southern at Farmville, N. C., and with the Atlantic Coast Line at Tarboro, N. C. Maury and Hookerton, N. C., are local stations on the East Carolina, situated almost opposite Snow Hill, Hookerton being the terminus of the line and 13 miles south of Farmville. Dealers at Maury, Hookerton, and Snow Hill compete actively, it is stated, in the intervening farming country. The Carolina Railroad asks for authority to maintain the same rates on fertilizers and materials to Snow Hill as are contemporaneously in effect to Maury, and to maintain rates to the intermediate stations on the basis prescribed in our original report. It is proposed, for example, to maintain a rate from Norfolk, Va., to Snow Hill of $2.65 per ton, this being the rate in effect to Maury and Hookerton, and to maintain a rate of $3.45 to the first station intermediate to Snow Hill.

The Carolina Railroad is in poor financial condition. In 1926 its railway operating income was only $2,715 and it had a deficit in net income of $4,690. In our original report we authorized it to charge 50 cents per ton over and above the standard-line rates, but the full amount of this arbitrary does not accrue to it on traffic interchanged with [fol. 39-3] the Norfolk Southern by reason of the fact that the arbitrary, under our order, is prorated with the latter line. The petitioner shows that for the four years, 1923 to 1926, and for the first four months of 1927, there was a

total movement of fertilizer to Snow Hill of 21,050 tons, and to the six intermediate stations on its line of 8,010 tons. It fears the loss of the greater portion of the tonnage to Snow Hill if its rates to that point are not reduced to meet the rates in effect to Maury, inasmuch as the highways in this section are in good condition and the farmers are likely to go to Maury for their fertilizer if the price is more favorable there than at Snow Hill. On the other hand, petitioner does not wish to reduce the rates to the intermediate points in order to conform to the provisions of the fourth section.

The relief sought is objected to by the Atlantic Coast Line. That carrier points out that there is considerably more territory tributary to Snow Hill than to Maury, and contends that if the farmers would go to farther distant points for their fertilizer because of the higher price at Snow Hill, they would probably go to Farmville instead of to Maury, as the highway to the former is in better condition and the saving in price would be still greater. From our understanding of the situation, also, it seems improbable that the entire tonnage to Snow Hill is used in the territory between that station and Maury; it is more likely that a considerable portion is used in the section west of Snow Hill and is less subject, therefore, to the competition at Maury.

We are not convinced that the relief sought is necessary or desirable under the circumstances, and the petition will therefore, be denied.

In our original report we authorized certain short or weak line carriers to charge 50 cents per ton over and above the standard line scale, and this arbitrary is now sought by the Nelson & Albemarle Railway, the Linville River Railway, the Atlanta & St. Andrews Bay Railway, and by the Louisville & Nashville on behalf of the Glasgow Railway and the Elkton & Guthrie Railroad. The first three carriers named above are in poor financial condition, and from a traffic standpoint are said to be in the same position as are the lines that were accorded the arbitrary basis under our original order. No objection has been offered to the relief sought, and we see no reason why a supplemental order should not be entered authorizing these lines to maintain the higher basis.

Both the Glasgow Railway and the Elkton & Guthrie connect with the Louisville & Nashville, and are operated by that carrier under leases whereby it turns over to them the net profits that accrue through their operation. It is understood that the Louisville & Nashville sustains any loss that may occur. Neither the Glasgow nor the Elkton [fol. 39-4] & Guthrie files tariffs with us, nor does either participate in tariffs filed by other lines. They are operated, apparently, as a part of the Louisville & Nashville system. Furthermore, it is not shown that the Glasgow Railway is in financial difficulties. In this connection, attention may be called to the fact that in Stock of Glasgow Ry., 117 I. C. C. 578, we authorized it to issue a stock dividend of $100,000. The relief sought by these lines will be denied.

Appropriate orders will be entered.

[fol. 29-5] At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 5th Day of July, A. D. 1927

No. 16295

Fertilizers and Fertilizer Material Between Southern Points

Fifth Supplemental Order

Upon further consideration of the matters and things involved in the above-entitled proceeding, and of the petitions of various carriers for modification of our previous findings and orders herein:

It is ordered, That the terms of the orders entered in connection with the original report in the above-entitled proceeding under date of July 19, 1926, and as subsequently amended, shall apply to the Atlantic & St. Andrews Bay Railway Company, the Linville River Railway Company, and the Nelson & Albemarle Railway Company to the same extent and in the same manner as they do to the carriers included in Appendix DD to the supplemental report of April 4, 1927.

It is further ordered, That the petitions of the Louisville & Nashville Railroad Company on behalf of the Elkton & Guthrie Railroad Company and the Glasgow Railway Company for authority to charge 50 cents per ton for the transportation of fertilizers and fertilizer materials in addition to the standard-line scale prescribed in our original report herein, be, and the same are hereby, denied.

It is further ordered, That the petition of the Carolina Railroad Company, dated June 10, 1927, seeking relief from the provisions of the fourth section of the act in connection with rates on fertilizers and fertilizer materials to Snow Hill, N. C., be, and the same is hereby, denied.

Fourth Supplemental Fourth Section Order No. 9346

Upon consideration of the joint petition of B. G. Brown and Charles Barham on behalf of various carriers parties to the above entitled proceedings, and good cause appearing therefor:

It is ordered, That fourth-section order No. 9346 of July 19, 1926, as subsequently amended, be, and the same is hereby, further amended by adding thereto the following paragraph:

[fol. 39-6] It is further ordered, That should the carriers parties to the above-entitled proceeding, in maintaining the rates herein prescribed, establish groups of destination or origin points, and the circuitous lines or routes shall meet the rates of more direct routes from or to points in said groups, they may maintain higher rates from and to intermediate points even though such rates shall exceed the rates prescribed for the distances involved, provided, however, that in no case shall the rates at such intermediate points exceed the rates prescribed by more than 15 cents per ton on and after September 20, 1927.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed January 18th, 1928

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above entitled suit.

P. J. Farrell, E. M. Reidy.

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—Filed January 18th, 1928

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering Paragraphs 1 and 2 of the petition, the Commission admits that the allegations therein contained are true.

II

Answering Paragraph 3 of the petition, the Commission admits that it made and entered the order of October 3, 1927, in a consolidated proceeding entitled "Fertilizers and Fertilizer Materials Between Southern Points"; that said proceeding included dockets of the Commission numbered

16295 and 16336; that said order was made in the docket numbered 16336; that said order was and is based upon findings of fact made and entered by the Commission in its report of July 19, 1926; that the citation of said report is 113 [fol. 42] I. C. C. 389, and that the Commission made and entered the other reports and the order of July 5, 1927, referred to in said paragraph, but the Commission denies that "Exhibit A" to the petition contains all of said report of July 19, 1926, which is material in this suit.

III

Answering Paragraph 4 of the petition, the Commission admits that said suit was instituted under the Constitution and laws of the United States, but denies that the suit was instituted under sections of the United States Code as stated in said paragraph, except to the extent that said sections are in harmony with the act of Congress approved October 22, 1913, 38 Statutes at Large, pages 219 and following.

IV

Answering Paragraphs 6 to 27, inclusive, of the petition, the Commission admits and alleges that said order of October 3, 1927, was duly served upon the parties therein named; that said order was made and entered in said consolidated proceeding pursuant to complaint filed in the Commission's office and numbered as aforesaid 16336; that said complaint contained allegations of fact substantially as set forth in paragraph 6 of the petition; that, prior to making, entering and serving as aforesaid said report of July 19, 1926, and said order of October 3, 1927, the Commission accorded to all parties to said consolidated proceeding, including the petitioners herein, at hearings in said proceeding, a full and fair opportunity to be heard upon all subject matters covered by the aforesaid complaint in said docket numbered 16336; that at said hearings a large volume of testimony and other evidence bearing upon said matters was submitted to the Commission for consideration on behalf of said parties, including the petitioners herein, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted

to the Commission for determination, on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said report of July 19 and said order of October 3, which report and order included the Commission's decision, conclusions, orders, and requirements in the premises; and that upon the evidence aforesaid, and as shown in and by said report of [fol. 43] July 19 and said order of October 3, the Commission made the findings, stated the conclusions, and prescribed the rules and regulations, and terms and conditions upon which said order of October 3 is based.

The Commission further alleges that said findings, conclusions, rules and regulations, and terms and conditions were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceeding as aforesaid, and the Commission denies each of and all the allegations to the contrary contained in the petition.

Further answering Paragraph 25 of the petition, the Commission alleges that the allegation that said order of October 3, 1927, "does not cover all the railroads doing an intrastate business in the transportation of fertilizers and fertilizer materials within the State of Alabama" is irrelevant and immaterial, and the Commission denies each of and all the other allegations contained in said paragraph.

Further answering Paragraph 27 of the petition, the Commission denies that either in its opinion, or its findings, or its conclusions, or its orders, or its judgments, the Commission acted either arbitrarily, or contrary to law, or contrary to the evidence, or without evidence to support its action in the premises, for the reasons, or for any of the reasons, set forth in said paragraph, or for any other reason.

The Commission further alleges that, in making said order of October 3, 1927, it considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said consolidated proceeding, by their respective counsel, including all matters covered by the material allegations of the petition herein.

The Commission further alleges that said order of October 3 was not made and entered either arbitrarily, or un-

justly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the petition.

[fol. 44] Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in said report of July 19, 1926, and said order of October 3, 1927, which report and order are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that the petition herein be dismissed.

Interstate Commerce Commission, by E. M. Reidy, Attorney. P. J. Farrell, of Counsel.

Duly sworn to by Joseph B. Eastman. Jurat omitted in printing.

[fol. 45] In United States District Court

[Title omitted]

Answer of Alabama Great Southern Railroad Company et al. — Filed January 20th, 1928

The joint and several answer of defendants, The Alabama Great Southern Railroad Company, Mobile and Ohio Railroad Company, Northern Alabama Railway Company, and Southern Railway Company.

Now come the following named defendants, who are common carriers by railroad, to wit, the Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, Northern Alabama Railway Company, and Southern Railway Company, by their solicitors, and for answer to the matters and things set forth in the petition filed in the above entered cause against them and others as defendants, answering, say:

I

Defendants admit the allegations of paragraph I concerning the State of Alabama. They admit that the Alabama Public Service Commission is a commission created under the laws of the State of Alabama, with limited powers, and such only as are conferred by the statutes of Alabama in regard to the regulation of strictly intrastate rates be- [fol. 46] tween points in Alabama; but the powers so delegated to said Alabama Public Service Commission in regard to the regulation of intrastate rates can only be exercised subject to the paramount power of Federal regulation, as exercised by the Interstate Commerce Commission under the Acts of Congress known as the Interstate Commerce Act, as amended; and these defendants aver that the Constitution of the United States and the laws of Congress passed pursuant thereto with respect to rates, fares, and charges, whether interstate or intrastate, are superior in authority to the laws of the State of Alabama, or the regulation of rates by the Alabama Public Service Commission, wherever such laws or state regulation come into conflict with the Federal power and the discharge of the duties imposed upon the Interstate Commerce Commission by the Acts of Congress known as the Interstate Commerce Act, as amended.

Defendants admit that the Alabama Public Service Commission was made a party to the proceedings before the Interstate Commerce Commission in which the order of said Commission, attacked in said petition, was entered; and they aver that said Alabama Public Service Commission took an active part, and participated throughout, in said hearings and proceedings before the Interstate Commerce Commission in its Docket No. 16295, Fertilizer and Fertilizer Materials Between Southern Points, and other cases heard therewith, including Docket No. 16336, entitled In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within the State of Alabama.

II

Defendants admit the allegations of paragraph II, in so far as said allegations relate severally to them; and they [fol. 47] aver that they are engaged in transporting persons

and property not only between points in the State of Alabama, but they are likewise engaged as common carriers of freight and passengers transported over their rails in interstate commerce from, to, and between points in the state of Alabama and points in other states of the United States, as well as in the handling of foreign commerce.

III

Answering paragraph III, defendants admit that the order complained of in the petition grew out of a general investigation ordered and held by the Interstate Commerce Commission concerning rates on fertilizer and fertilizer materials within southern territory, being Docket No. 16295, and entitled Fertilizer and Fertilizer Materials between Southern Points, which general investigation was conducted by the Interstate Commerce Commission and included within its scope rates from, to, and between points in southern territory, as in its said reports and findings more particularly described. There were consolidated and heard therewith certain other cases concerning intrastate rates on fertilizer and fertilizer materials, including Docket No. 16336, entitled In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within the State of Alabama.

Defendants admit that on July 19, 1926, the Interstate Commerce Commission rendered a report in said general investigation of fertilizer rates and in the consolidated cases heard therewith, officially reported in 113 I. C. C., beginning at page 389, and later made certain supplemental reports and orders in said proceedings, the one dated April 4, 1927, officially reported in 123 I. C. C., beginning at page 193, and the other dated July 5, 1927, and officially reported [fol. 48] in 129 I. C. C., 215; but defendants deny that all of said original report, material to an understanding of this case, is set out in "Exhibit A" with the petition; and to the end that this Court may have before it the complete text of the said original report and accompanying order, there is now filed herewith, marked "Exhibit No. 1," a duly certified copy of said original report and order dated July 19, 1926, in Docket No. 16295, which exhibit is asked to be read with and as a part of this answer. Duly certified copies of the said supplemental reports of the Commis-

sion in the same proceeding, dated April 4, 1927, and July 5, 1927, are likewise filed herewith, marked "Exhibit No. 2," and "Exhibit No. 3," respectively, and are asked to be read with, and as a part of, this answer.

Defendants admit that "Exhibit B" with the petition is a copy of the order entered July 5, 1927, in said proceeding in connection with the supplemental report of that date, a copy of which is above exhibited as Exhibit No. 3.

Defendants admit that on October 3, 1927, the Interstate Commerce Commission made and entered its order in Docket No. 16336, a copy whereof is filed as "Exhibit C" with the petition, which is the order attacked and sought to be enjoined in said petition. Defendants aver that, as shown by the original report in Docket No. 16295, Fertilizer and Fertilizer Materials between Southern Points, 113 I. C. C., at page 389, a certified copy whereof is filed with this answer, the said proceeding known as Docket No. 16336, In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate within the State of Alabama, along with other cases, was consolidated and heard with said principal case, hereinafter referred to as the General Investigation of Fertilizer Rates, upon one record, all of said cases being consolidated and disposed of in the reports above referred to and the accom- [fol. 49] panying orders, including said last mentioned order of October 3, 1927, directed at the intrastate rates in Alabama, being the order attacked in this proceeding, and a copy whereof is filed as Exhibit C with said petition.

IV

The allegations of paragraph 4 concern matters of law solely, but defendants deny the allegation that "the jurisdiction of said court depends upon the fact that this action arises under the Constitution and laws of the United States."

V

Answering paragraphs numbered 5, 6, and 7:

Defendants admit the allegations of paragraph 5 of said petition, as to the institution by the Alabama Public Service Commission, in September, 1921, of an investigation

into freight rates on many commodities moving between points in the state of Alabama; and that on or about, to-wit, the 26th day of May, 1924, the Alabama Public Service Commission undertook to prescribe two scales of mileage rates applicable on carload movements of fertilizer and fertilizer materials, which scales said Commission undertook to have applied intrastate over standard lines within the state of Alabama, and that "Exhibit D" with said petition is a copy of said scales, as prescribed by said Alabama Commission; and that in the same order said Commission undertook to prescribe rates on fertilizer and fertilizer materials moving in less-than-carload quantities, making the same 120 per cent of the carload rates.

Said order issued by the Alabama Commission under date of May 26, 1924, was, by its terms, to be made effective sixty days from the date thereof, making the effective date of said order July 26, 1924. Defendants aver, however, [fol. 50] that they never acquiesced in the said order, or the rates therein prescribed, and promptly sought, through the method provided by law, to have the Interstate Commission correct the situation complained of and to prevent the violations of Federal law and the sacrifice of revenues brought about and produced by compliance with said order; and to that end defendants promptly prepared, under date of July 30, 1924, a petition before the Interstate Commerce Commission filed on August 6, 1924, and given its Docket Number 16536, wherein it was set forth that the rates prescribed by the Alabama Public Service Commission on fertilizer and fertilizer materials and articles taking the same rates in its said order of May 26, 1924, for intrastate application between points in Alabama, were unduly and unreasonably low, and were materially lower than interstate rates on fertilizer and fertilizer materials which had theretofore been prescribed by the Interstate Commerce Commission in cases theretofore heard by it, and were even lower than the intrastate rates formerly in effect in Alabama. In said petition it was set forth and alleged that said unusually and unreasonably low intrastate rates so prescribed by the Alabama Commission were unlawful and would cause and give an undue and unreasonable advantage and preference to persons and localities using said unreasonably low Alabama intrastate rates, and

would unjustly discriminate against and unduly prejudice persons and localities shipping fertilizer and fertilizer materials in interstate commerce and would create the undue, unreasonable, and unjust discrimination against interstate commerce forbidden and declared to be unlawful by the Interstate Commerce Act, as amended. This is the complaint or petition referred to in the paragraph numbered 6 of said petition here, and a true copy of said petition, which was filed by these defendants and other standard lines operating in the State of Alabama, with the Interstate Commerce Commission on Aug. 6th, 1924, and given its Docket No. 16336, is herewith filed, marked "Exhibit No. 4," and is asked to be read with and as a part of this answer. Defendants admit that after the filing of the said [fol. 51] petition, said Interstate Commerce Commission, acting thereon, instituted an investigation under its said Docket No. 16336, entitled "In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate within the State of Alabama, as per its order of the 14th day of October, 1924, a duly certified copy whereof is herewith filed, marked "Exhibit No. 5," and is asked to be read with and as a part of this answer, which investigation was later consolidated and heard along with the General Investigation of Fertilizer Rates inaugurated by the Interstate Commerce Commission under its Docket No. 16295.

VI

Answering paragraph 8 of said petition, these defendants specifically deny the allegations thereof to the effect that the issue presented by the complaint filed by defendants in Docket No. 16336 and the investigation ordered by the Commission in said docket under date of October 14, 1924, were limited in their scope solely to an alleged violation of Section 3 of the Interstate Commerce Act, as amended, or that said issue "was limited to specific rates complained of in said complaint." The complaint alleged and set forth facts showing violations of Section 3, and sub-divisions 3 and 4 of Section 13, and also of Section 15 (a) of the Interstate Commerce Act, as amended by the Transportation Act, 1920, and the Interstate Commerce Com-

mission, by its order of October 14, 1924, (copy whereof is exhibited herewith as Exhibit No. 5) instituted and ordered an investigation—

"To determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice, or discrimination, of any, as may be found to exist."

[fol. 52] These defendants aver that, by the provisions of Section 13(4), the Interstate Commerce Commission was not only justified and required, upon the facts, to inaugurate such investigation and to hold hearings, but it was thereby required to—

"Prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, or discrimination."

Defendants, therefore, deny specifically that the sole issue before the Commission was an alleged violation of Section 3, or that the issue was limited "to the specific rates complained of in said complaint;" and they aver that the investigation ordered by said Commission, by its said order of the 14th day of October, 1924, was not so limited in its scope, but contemplated not only an investigation of the matters and things complained of, falling within the scope of the complaint, but as outlined in its said order, the fixing of rates for the future and charges, regulations, and practices thereafter to be observed in consonance with the provisions, not only of Section 3, but of Section 13 (3) and (4), and 15 (a), as well as the other provisions of the Interstate Commerce Act, as amended; notice of which proceeding,

so inaugurated by the Interstate Commerce Commission, was given to the Governor of the State of Alabama and to the Alabama Public Service Commission, and which proceeding was consolidated and thereafter heard with the General Investigation of Fertilizer Rates under Docket No. 16295, wherein the Interstate Commerce Commission later promulgated and fixed the scale of fertilizer rates and fixed the level of such rates for application throughout southern territory.

VII

Answering paragraphs 9 and 10 of the petition, these defendants admit that Docket No. 16336, covering the investigation ordered by the Interstate Commerce Commis-
[fol. 53] sion by its order of October 14, 1924, into the matter of rates on fertilizers and fertilizer materials intrastate within the state of Alabama, with similar investigations relating to intrastate rates in other states, was consolidated with the General Investigation of Fertilizer Rates, Docket No. 16295, and that the investigations concerning rates in other states, consolidated and heard with said general investigation, included not only the Alabama intrastate rates under Docket 16336, but likewise Docket No. 16335. In the Matter of Rates on Fertilizers and Fertilizer Materials intrastate within the State of South Carolina; Docket No. 16484. In the Matter of Rates on Fertiliers and Fertilizer Materials and Articles Taking the Same Rates Intrastate within the State of Georgia; and also various fourth section applications listed in Appendix E to the report of the Interstate Commerce Commission in said general investigation, 113 I. C. C. 389. Defendants admit that, in said Docket No. 16295, a general investigation was ordered by the Interstate Commerce Commission under date of October 7, 1924, and has been heretofore, and will be hereafter, referred to as the General Investigation of Fertilizer Rates. The scope of said general investigation, so ordered, will be disclosed by reference to a certified copy of said order herewith filed, marked "Exhibit No. 6," and asked to be read with and as a part of this answer; and as illustrating further the scope of said investigation and some of the purposes sought to be accomplished thereby and there-

under, in connection with the cases involving intrastate rates in Alabama, Georgia, and South Carolina, there is likewise filed herewith, marked "Exhibit No. 7," and asked to [fol. 54] be read with and as a part of this answer, a duly certified copy of the notice issued March 9, 1925, in said Docket No. 16295 and consolidated cases. From the two exhibits last mentioned, as well as from the report of the Interstate Commerce Commission in its said Docket No. 16295, 113 I. C. C. 389, it will be seen that this investigation concerned rates and fertilizer and fertilizer materials throughout southern territory, as defined in the citation and in Appendix A to said last mentioned report. In the notice issued under date of March 9, 1925, outlining the procedure and indicating some of the subjects to which the evidence should be directed, it is stated:

"This investigation was deemed advisable because of widespread differences in the rates for substantially similar hauls, numerous departures from the long-and-short-haul provision of the fourth section, lack of uniformity between the general levels of the interstate rates and the intrastate rates in several of the States, and the frequent complaints with reference to the rates. The purpose of the proceeding is to determine upon a basis of rates for interstate application throughout the territory involved which will be reasonable for the transportation of this particular traffic, will be free from undue prejudice and preference, and will conform to the fourth section of the act. With the proceeding there have been consolidated for hearing investigations under section 13 of the act instituted upon petition of carriers and involving alleged undue preference of intrastate traffic in Alabama, South Carolina, and Georgia, and alleged undue prejudice to interstate traffic. While other intrastate rates have not been brought in issue the desirability of fixing interstate rates which can fairly and appropriately be used as a basis for achieving harmony between the interstate and intrastate rates will be kept constantly in mind. With this end in view, testimony relating to intrastate adjustments will be freely admitted."

Defendants aver, therefore, that at the outset of this general investigation the parties were notified of the pur- [fol. 55] pose of the Commission to investigate the rates on

fertilizer and fertilizer materials throughout southern territory, with a view to fixing a reasonable and just level of rates for the transportation of this traffic, whether moved in interstate or intrastate commerce, and, having so fixed and prescribed the level of interstate rates, the scale of rates used in determining the same was to be uesd "as a basis for achieving harmony between interstate and intrastate rates," particularly in view of the fact that the intrastate rates in effect in Alabama, in South Carolina, and in Georgia, were under review as result of the separate investigations of those intrastate rates inaugurated by the Commission on complaints of the railroads, and consolidated with said general investigations.

Defendants deny the allegation of paragraph 10 that only—

"Some portion of the intrastate rates in Alabama were attacked, as abovesaid, on the ground that they were in violation of section 3 of the Acts to Regulate Commerce."

and they aver that the intrastate rates in Alabama were specifically brought in issue by the complaint filed by the railroads, attacking said rates, and that they were involved in said Docket No. 16336 and the investigation thereunder ordered by the Interstate Commerce Commission, not merely under Section 3, but under Section 13 (3) and (4), as well as under Section 15a of the Interstate Commerce Act, as amended, in connection with the general investigation and the consolidated cases heard therewith, and that, therefore, the scope of the investigation concerning the intrastate rates in Alabama was wider than that alleged in paragraphs 8, 10, and other paragraphs of said petition, which allege, in substance, that the investigation as to Alabama rates was confined to an alleged violation of Section 3 of the Interstate Commerce Act.

[fol. 56] VIII

Answering paragraph 11 to 13, inclusive, of said petition, these defendants admit that, following the inauguration of the investigation aforesaid and the consolidation therewith of the several separate investigations concerning intrastate rates, elaborate hearings were had before the Interstate

Commerce Commission, and that Commission accorded to all parties to said consolidated proceeding, including the petitioners herein, at said hearings held throughout the course of said proceeding, a full and fair opportunity to be heard upon all subject matters falling within the scope of said general investigation and other cases consolidated and heard therewith, including the matters arising in Docket No. 16336; and that, during the course of said hearings, which covered a period of six months, a large amount of testimony and documentary evidence bearing upon the matters under investigation was submitted to the Commission, including the evidence (both oral and documentary) submitted by witnesses for the petitioners here, under the guidance of their counsel. At said hearings and subsequently, both orally and on briefs filed in said proceeding, all questions relating to said matters under consideration were fully presented, argued, and submitted to the Commission for determination on behalf of said parties, including the petitioners here, by their respective counsel. Whereupon, the Commission determined said matters and made and entered its said original report and supplemental reports and its orders accompanying the same, including said order of October 3, 1927, which is the order attacked in this proceeding, which said reports, so rendered and filed, and the ac- [fol. 57] companying orders issued and served, including said order of October 3, 1927, embodied the Commission's decision, conclusions, orders, and requirements in the premises and prescribed the rates, charges, rules, and regulations to be observed by defendants in the future with respect to the transportation of fertilizer and fertilizer materials in southern territory, including the intrastate transportation of this traffic between points in Alabama, in accordance with the mandate of said order of October 3, 1927, which is directed particularly to the rates and charges for the intrastate transportation of fertilizer and fertilizer materials between points within the state of Alabama.

Defendants aver that said order of October 3, 1927, entered in Docket No. 16336, and the findings, conclusions, and requirements reached and made by the Interstate Commerce Commission, as embodied in its reports and said order in regard to rates for application to the intrastate transportation of fertilizers and fertilizer materials between points in

the state of Alabama, were and are, and that each and all of them was and is, fully supported, sustained, and justified by the evidence submitted to the Commission in said proceeding as aforesaid; and these defendants specifically deny each and all of the allegations to the contrary contained in said petition.

Defendants specifically deny the matters and things alleged in paragraph 11, except that they admit that full hearings were had before the Interstate Commerce Commission and a large amount of testimony was taken in the proceedings aforesaid.

Defendants deny the matters and things alleged in paragraph No. 12, except that: (a) defendants admit the words [fol. 58] in quotation marks quoted from the report of the Commission, but they aver that the quoted words do not constitute or reflect the full substance of the report or the findings of the Commission made therein, and they beg leave to refer to the report in its entirety for the findings in regard to intrastate, as well as interstate rates; (b) defendants admit that in making the finding quoted the Commission had under consideration the intrastate rates in Alabama, as well as in other southern states; and (c) they admit that the report of the Interstate Commerce Commission in said consolidated cases was entered July 19, 1926, and is officially reported at 113 I. C. C. 389, but these defendants deny that the excerpts quoted from said report contained in Exhibit A attached to said petition are all of the pertinent parts of said report, and they aver that it is necessary for the Court to have before it and to consider the report and supplemental reports which have heretofore been exhibited with this answer.

Defendants specifically deny the allegations of paragraph 13.

[fol. 59] IX

Answering paragraph 14 defendants admit that, in its report in its Docket No. 16295, the Interstate Commerce Commission prescribed a uniform scale of rates for application throughout southern territory. Concerning the necessity for a uniform level of rates throughout southern

territory that Commission said, in its report, 113 I. C. C., at page 422:

"Carriers and shippers agree, with a single exception, that a uniform level of fertilizer rates is desirable throughout all of southern territory. The single exception is the Florida East Coast, which desires a somewhat higher level to and from points in the Florida peninsula. Considering all the circumstances surrounding this particular form of traffic and the general agreement upon this point, resulting in a paucity of evidence to the contrary, we think that the record supports one uniform level."

Defendants aver that, as stated by the Commission, the parties of record, including the petitioners, agreed with practical unanimity that there should be one level of rates applied on fertilizer and fertilizer materials throughout the whole of southern territory, and the petitioners here did not dissent from, but, on the contrary, acquiesced in, that view. The determination of the proper level of rates and the measure of the scale to be used in fixing the rates were matters which were, of necessity, left to the judgment of the Interstate Commerce Commission under the evidence upon the record made in said consolidated proceedings and said general investigation.

Defendants aver that, as shown by the recitals in the report of the Interstate Commerce Commission, the representatives of the manufacturers and shippers, and also the Alabama Public Service Commission, one of the petitioners here, advocated for adoption the scale of rates theretofore prescribed by the Alabama Public Service Commission in its order of May 26, 1924, which was the lowest scale of rates on fertilizer and fertilizer materials in southern terri- [fol. 60] tory, whereas the railroads, including these defendants, advocated for adoption the scale of rates known as the Royster Scale, referred to in the report of the Interstate Commerce Commission, 113 I. C. C., 389, as having been previously prescribed for application in Carolina territory and thrice approved by it for application in that territory. After having reviewed the mass of evidence before it, and having adverted to the mandate of the Hoch-Smith Resolution in regard to a redistribution of transportation charges, the Interstate Commerce Commission said—

"that upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation."

and proceeded to prescribe what, in its judgment, it considered to be a reasonably low scale of rates to be used in fixing rates on fertilizer and fertilizer materials throughout southern territory, having in view its finding that these commodities should be leniently treated in distributing the cost of freight transportation and that they were entitled to consideration under the principles predominant in the Hoch-Smith Resolution. The Interstate Commerce Commission said, in this connection, 113 I. C. C., at page 424:

"Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, and having in mind the principles which we believe should be applied in distributing the burden of rail transportation and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted."

Some of the consideration inducing the interstate Commerce Commission to prescribe a single scale of rates for application for either joint line service or single line hauls are set forth in its report, 113 I. C. C., at pages 422-424, particularly in connection with the short-route rule for determining distances, which it likewise promulgated. [fol. 61] The Commission then set forth the scale which it prescribed and embodied in its order accompanying its said report and directed that said uniform scale should apply to the interstate transportation in carloads of mixed fertilizers and fertilizer materials listed in Appendix B to its report, over standard lines throughout the southern territory, as described in Appendix A to its said report, subject to the minimum carload weights therein found reasonable, and in so promulgating and ordering said scale it was

provided, in said report, at page 424, and in the accompanying order—

"that in applying such rates to the longer hauls the respondent carriers may for the purpose of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups."

It was likewise required that, in computing distances for the application of the rates prescribed the shortest routes should be used over which carload traffic could be moved without transfer of lading, all of which findings, requirements, and orders were and are binding upon these defendants, as well as upon all of the other parties to said proceeding, including the petitioners here, and cannot be drawn in question or reviewed by any other tribunal under the law of the land, as interpreted by the Supreme Court of the United States, since said findings, requirements, and the orders embodying the same and accompanying said report are amply sustained by the evidence of record before the Interstate Commerce Commission in said consolidated proceedings.

Defendants specifically deny that the Interstate Commerce Commission was not justified, on the record before it, in prescribing one scale for uniform application for joint, as well as single line, hauls between points on standard lines, and the mere fact that the Interstate Commerce Commission, in said proceeding, ordered a scale for uniform application which scale differs from any scale advocated by shipper or carrier, and differs from the Alabama scale, in no way militates against the validity, conclusiveness and binding effect of said findings, requirement and [fol. 62] order of the Interstate Commerce Commission promulgating and requiring the maintenance of rates upon basis of the scale so prescribed by it, that finding and order of said Commission in regard to said scale being, as these defendants aver, conclusive and binding upon all parties to said proceeding, including petitioners here.

Defendants deny that in its order of October 3, 1927, entered in Docket No. 16336, the Interstate Commerce Commission prescribed any different basis or level of rates for intrastate application in Alabama from that which it had

theretofore prescribed for uniform application throughout southern territory, or that it forbade grouping of the shorter intrastate hauls in its said order of October 3, 1927, directed at the intrastate rates in Alabama. In said last mentioned order the railroads, according as they respectively participate in the transportation, were thereby ordered and required—

"to establish, on or before January 3, 1928, * * * and thereafter to maintain rates and charges for the transportation of fertilizers and fertilizer materials in intrastate commerce within the state of Alabama which shall be no less, for corresponding distances, than the rates contemporaneously applied by said carriers, in accordance with our order of July 19, 1926, and as subsequently amended, to the transportation by said carriers of fertilizers and fertilizer materials between points in the state of Alabama and points in other states."

And defendants aver that the rates by them published, to become effective in intrastate traffic between points in the state of Alabama, in obedience to the requirements of said orders, are based upon the same scale and reflect the same groupings and the same method of ascertaining distances as prevail and were used in publishing the interstate rates in obedience to said orders of the Interstate Commerce Commission.

Defendants specifically deny the allegations of paragraph 14 to the effect that, while the interstate scale permits grouping for the "longer hauls," that the intrastate rates as fixed by the Interstate Commerce Commission do [fol. 63] not permit such grouping. They deny the allegation that under the order of the Interstate Commerce Commission there is no authority for a limited grouping of the shorter intrastate hauls. On the contrary, these defendants aver that such limited grouping for interstate hauls is permitted to the extent indicated in the said decisions and orders, and particularly in the original report as modified and supplemented in this point by the second supplemental report of the Interstate Commerce Commission and the accompanying orders, dated July 5, 1927, and such limited grouping was likewise observed in the revision of intrastate

rates between points in Alabama published in obedience to the order of October 3, 1927, entered in Docket No. 16336.

Defendants admit that the Interstate Commerce Commission, in its findings, fixed less-than-carload rates at 130 per cent of the carload rates.

X

Answering paragraph 15, defendants admit that the quotation made from page 435 of the report of the Interstate Commerce Commission in its Docket No. 16295 is correct, as far as it goes, but defendants deny that the finding quoted constitutes the sole finding with respect to intrastate rates in Alabama. And defendants likewise deny the other allegations of said paragraph 15, in manner and form as alleged.

XI

Answering paragraph 16, defendants admit that the order for a general investigation of fertilizer rates, inaugurating the proceeding in Docket No. 16295, did not include import rates within its scope, and that the Commission so found and held in its report in said docket, as by reference to said report, 113 I. C. C., at page 428, will more fully appear. Defendants deny, however, the other matters and [fol. 64] things alleged in said paragraph numbered 16, and specifically deny the allegation that the "inbound rates frequently and generally in combination with the outbound rates showed an equality among manufacturers, whether shipping interstate or intrastate, of total freight charges."

XII

Answering paragraph 17, defendants aver that the extent to which any equalization of rates into the South from the Ohio River crossings was permitted in the report of the Interstate Commerce Commission in Docket No. 16295 is not correctly stated or recited in said paragraph. The extent to which any equalization or relative adjustment from the Ohio River crossings and gateways was permitted is clearly stated in said report of the Interstate Commerce Commission, 113 I. C. C., at pages 427-428, and that equalization is merely for the purpose, and to the extent there

indicated, of keeping open the Cincinnati gateway in competition with the other Ohio River gateways and river crossings to points in what is known as Montgomery subterritory and of maintaining the equalization of Ohio River crossings and cities to points in Atlanta territory, Louisville being the pivotal point, and the rates therefrom are required to be established in accordance with the distance scale prescribed.

Concerning the relative adjustment from the Ohio River crossings and gateways, the Commission said, 113 I. C. C., at page 428:

"To the extent that this adjustment may be accomplished without deviation from our findings as to reasonable maximum rates, and under the fourth-section relief hereinafter accorded, there seems, with the exception noted, to be no sufficient reason for disapproval."

The Commission, however, said in its report, at page 428:

"It is understood that the rates under this proposed adjustment from the Ohio River crossings would apply largely on fertilizer materials such as tankage, dried blood and cyanamid, originating beyond the crossings, and that little or no mixed fertilizer tonnage would be handled thereunder."

[fol. 65] In as much as said relative adjustment of the Ohio River cities was and is a gateway adjustment, used principally in the handling of through traffic from points beyond, and primarily for the purposes of keeping open the several competing routes operating through the different River gateways, there was no objection urged at the hearing, on the part of any interest or on the part of petitioners here, to the maintenance of the Ohio River relative adjustment.

Aside from that relative adjustment, the extent to which the carriers were authorized to use small groupings and to fix rates to and from representative points in such groups of moderate extent, has been adverted to in answering paragraph 14 of said petition and is shown in the report and accompanying orders in said Docket No. 16295.

Defendants admit, subject to verification, that Exhibit B attached to said petition is a copy of the order issued under date of July 5, 1927, by the Interstate Commerce Commission in its Docket No. 16295, and includes the fourth supplemental Fourth Section Order No. 9346, which relates to and grants fourth-section relief to the circuitous lines or routes to meet the rates of more direct routes, in the following words and figures, to-wit:

"It is further ordered that should the carriers parties to the above-entitled proceeding, in maintaining the rates herein prescribed, established groups of destination or origin points, and the circuitous lines or routes shall meet the rates of more direct routes from or to points in said groups, they may maintain higher rates from and to intermediate points even though such rates shall exceed the rates prescribed for the distances involved, provided, however, that in no case shall the rates at such intermediate points exceed the rates prescribed by more than 15 cents per ton on and after September 20, 1927."

The foregoing mandate, quoted from this order, restricts any departure from the scale in connection with fourth-section relief granted where group adjustments are involved, so that such departure shall not exceed 15 cents per ton over or under the rate which would be applicable were the scale applied strictly point to point and no group [fol. 66] adjustments were permitted. Concerning this departure from the strict point to point application of the scale prescribed, the Commission said, in its second supplemental report of July 5, 1927, 129, I. C. C., at page 215, after referring to what it had previously said in its original report, 113 I. C. C., page 424, on this same subject, that—

"It appears that in the maintenance of groups under the foregoing authority, the rates between various points will be somewhat higher than they would be if the scale were strictly applied on a point-to-point basis. Such departures from the scale were forbidden in fourth-section order No. 9346, issued in connection with our original report, and the carriers now ask that that order may be amended so that it will not interfere with the grouping

plan. No objection to such an amendment has come to our attention, and in order that reasonable groupings may be maintained some leeway in this respect seems to be necessary."

Thereupon the Commission issued its fourth supplemental Fourth Section order, the mandate from which has been quoted above, and that requirement restricted any departure from the scale so as to be within extremely narrow limits.

The allegation in paragraph 17 of said petition in regard to constructive mileage of 50 miles for a car-float of twenty miles in the Tennessee River in Alabama relates to the service of the Nashville, Chattanooga & St. Louis Railway, as to which it is assumed that defendant will answer.

XIII

Answering paragraph 18 of the petition, defendants say that while it is true that prior to the publication of the rates prescribed by the Interstate Commerce Commission in its Docket No. 16295, the carload minimum on mixed fertilizers in connection with the interstate adjustment was, generally, 15 tons, nevertheless the findings made in the report show that the average loading of mixed fertilizers in the South was in excess of twenty tons. It is apparent, therefore, that under the former interstate adjust- [fol. 67] ment, although the carload minimum was 15 tons the freight charges collected under the interstate rates were, on the average, based on a weight in excess of 20 tons.

Defendants aver, however, that the scale prescribed by the Interstate Commerce Commission for application throughout southern territory, and the interstate rates which have been published in obedience to the mandate of the order of the Interstate Commerce Commission in its Docket No. 16295, are on basis of a carload minimum weight of 20 tons, that being the carload minimum weight for mixed fertilizers fixed and prescribed by the Interstate Commerce Commission after it had reviewed the evidence and considered the suggestions of all parties in interest, the subject of carload minimum weight being discussed in its original

report, 113 I. C. C., at page 400, the Commission saying, at page 410:

"It would seem that the time has come when an increase in the carload minimum on fertilizer may properly be made. The record contains no pronounced objection to the higher minimum, and the attitude of the shippers is, in general, favorable."

It, thereupon, ordered a 20-ton carload minimum weight in connection with the scale which it prescribed for application throughout southern territory, and that carload minimum is in effect as a part of the interstate adjustment, in obedience to the mandate of the order of the Interstate Commerce Commission and is required to be observed in its order of October 3, 1927, in connection with intrastate shipments in Alabama.

XIV

Answering paragraph 19 of the petition, defendants admit that they and other standard railroads filed with the Alabama Public Service Commission petitions for authority to make effective, for intrastate transportation between points in Alabama, the same rates on fertilizer and fertilizer materials as had been prescribed by the Inter-[fol. 68] state Commerce Commission for interstate application in its Docket No. 16295. Said applications were so filed by the defendants with the Alabama Public Service Commission in order to bring the intrastate rates on this traffic in Alabama into harmony with, and make them conform to, the interstate adjustment as prescribed and fixed by the Interstate Commerce Commission. The said Interstate Commerce Commission, in its report in Docket No. 16295, 113 I. C. C., at pages 431-432, said concerning the contention then made by the Alabama Public Service Commission, which is the same as the contention here advanced by petitioners, that:

"The Alabama commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks, 85 I. C. C., 66, and that before an intrastate rate may be condemned it

must be found to work undue prejudice against persons or localities in interstate or foreign commerce or unjust discrimination against interstate or foreign commerce as a whole, citing Wisconsin R. R. Commission v. C. B. & Q. R. R. Co., 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the Alabama rates is 5 tons higher than under the interstate rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but specific consideration of the present interstate rates is unnecessary, for they will be changed under our findings herein. As shown by the above table, the new rates will be substantially higher for equal distances than the Alabama intrastate rates, and they will be subject to the same carload minimum.

"While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce, as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful."

And on page 435 of its report, the Interstate Commerce Commission made the following finding:

"With respect to these intrastate cases we find:

1. That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found [fol. 69] reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce."

* * * * * * *

"No orders will be entered in these State cases, Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment."

The Intedstate Commerce Commission had made a thorough investigation in said proceeding not only in regard to the interstate rates, but also concerning the intrastate rates in Alabama, in South Carolina, and in Georgia, which intrastate rates were involved in Dockets Nos. 16335, 16336, and 16484. Having made findings requiring the same level intrastate as interstate, and having fixed the interstate level and scale to govern the interstate rates on the assumption and with the avowed expectation that intrastate rates throughout the South, including the intrastate rates in Alabama, would be brought into conformity with the interstate rates so prescribed, as shown in its said reports in Docket 16295 and consolidated cases heard therewith, the Interstate Commerce Commission did not at once proceed to enter an order such as it later entered, directing and requiring the railroads to place the Alabama intrastate rates on the interstate level. Having prescribed the rates to govern throughout southern territory and fixed the scale to be used as a yardstick, in a spirit of comity and in an effort to cooperate, the Federal Commission afforded the State commissions an opportunity to bring the intrastate rates in the respective states into harmony with the interstate adjustment, and stated, in the language above quoted, that no order would be entered in the three state cases, Nos. 16335, 16336, and 16484, at that time because it believed "that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment."

[fol. 70] Notwithstanding the fact that the Alabama Public Service Commission, one of the petitioners here, had appeared and participated in the proceedings before the Interstate Commerce Commission in Docket No. 16295 and in Docket 16336, heard in connection therewith, had submitted all of the evidence it desired to submit and had been offered full opportunity to be heard on all the points or issues it desired to raise, and had been further heard on brief

and in oral argument, nevertheless when afforded an opportunity to bring its rates into harmony with the rates fixed and prescribed by the Interstate Commerce Commission in said proceedings, said Alabama Public Service Commission, petitioner here, declined to do so, although stating, in its report, after referring to the decision and orders of the Interstate Commerce Commission, that—

"The revised interstate rates have been published by the carriers, and they ask us to sanction the publication of identically the same rates on Alabama intrastate traffic in lieu of the existing rates."

It, thereupon, denied the petition of the carriers, and in its report accompanying its order stated that it adhered to the scale which it had promulgated on May 26, 1924, although that scale had been before the Interstate Commerce Commission in said general investigation and in said Docket No. 16336, and notwithstanding the fact that the Federal Commission had found that the rates produced by said intrastate scale were unduly low and, if applied and continued in effect in Alabama, as contrasted with the interstate rates which the Interstate Commerce Commission had prescribed and promulgated in said Docket 16295 and consolidated cases heard therewith, would produce and cause the undue and unreasonable advantage, preference and prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce on the other hand, and the undue, unreasonable and unjust discrimination against interstate or foreign commerce which was forbidden and declared to [fol. 71] be unlawful by the Interstate Commerce Act, as amended, and notwithstanding the further fact that the Interstate Commerce Commission, through its said orders, had prescribed the level of rates thereafter to be observed intrastate in Alabama to remove such advantage, preference, prejudice and discrimination, and had fixed the general level of rates to be observed on fertilizer and fertilizer materials throughout southern territory. Thereby, and as a result of its refusal to follow, observe, respect, or recognize the findings of the Interstate Commerce Commission and the level of rates fixed and prescribed by it, the Alabama Public Service Commission undertook to

compel the railroads operating in Alabama to continue in effect the unduly low and discriminatory rates which that tribunal had theretofore prescribed but which had been rejected, after investigation, by the Interstate Commerce Commission in said general investigation and had therein been found to be unduly low and as causing revenue losses to such an extent that, if applied on this traffic throughout southern territory, the revenues of the carriers would be reduced in excess of $1,000,000 per annum.

XV

Answering paragraph 20, these defendants admit that they and other defendants, on or about September 1, 1927, brought to the attention of the Interstate Commerce Commission, through a petition duly filed, the fact that the Alabama Public Service Commission, by its report and order of July 18, 1927, had denied the carriers' petition to make effective intrastate in Alabama the same rates as had been prescribed by the Interstate Commerce Commission in the proceedings aforesaid, and published and made effective on fertilizer and fertilizer materials moving between points on standard lines throughout southern territory in obedience to the mandate of the orders of the Interstate Commerce Commission, notwithstanding the explicit findings contained in the report accompanying the [fol. 72] order of the Interstate Commerce Commission that the same level of rates should apply intrastate in Alabama as had been ordered for interstate application.

Defendants deny that any further hearing was necessary, on said petition or prior to the issuance by the Interstate Commerce Commission of its order of October 3, 1927, in as much as the most elaborate hearings had already taken place in said general investigation of fertilizer rates and in said proceeding heard therewith, known as Docket No. 16336, in which proceedings petitioners here had participated throughout and had therein urged the adoption of the scale promulgated by said Alabama Public Service Commission and later adhered to by it. The Interstate Commerce Commission, after having considered all of the evidence offered by the petitioners here in said proceeding, as well as the evidence offered by the manufacturers and shippers in support of the shippers' proposed scale, which,

as stated, was substantially the same as the Alabama intrastate scale—the lowest scale of fertilizer rates in the South—overruled the contention of said petitioners here, as well as that of the shippers and manufacturers, concerning the scale to be adopted, and after carefully reviewing all of the facts developed by the evidence, including the revenue test ordered by the Interstate Commerce Commission and made by the carriers, prescribed the scale of rates thereafter to be used to fix the measure of rates on fertilizer and fertilizer materials moving between points on standard lines in southern territory. Having so fixed the interstate rates, and having made findings which condemned the Alabama intrastate rates, as well as the other findings set forth in its report in regard to those rates, and having overruled the contentions of the Alabama Public Service Commission, which are essentially the same as now urged by the petition-[fol. 73] ers here, it was only necessary for the Interstate Commerce Commission to make its said order of October 3, 1927, which, in turn, merely carried into effect the findings which it had theretofore made in its said report with respect to the Alabama intrastate rates.

Defendants, therefore, specifically deny that said order of October 3, 1927, was entered by the Interstate Commerce Commission without a hearing. The entering of said order concurrently with the filing of its report of July 19, 1926, in Docket No. 16295 and consolidated cases was merely deferred, under the circumstances therein stated, because, as stated in 113 I. C. C., at page 435:

"It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment."

XVI

Respondents specifically deny the allegations of paragraph 21 of said petition to the effect that said conclusions and findings of the Interstate Commerce Commission were indefinite or that the Interstate Commerce Commission did not find the extent to which it was necessary to change the intrastate rates in Alabama to remove the unjust discrimination found against interstate commerce. On the con-

trary, that Commission specifically found and held, inter alia (113 I. C. C., page 435):

"that the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will, for the future, result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce,"

and in the language quoted in the last succeeding paragraph it plainly stated that to remove the discrimination found it was necessary that the intrastate rates in Alabama be [fol. 74] placed upon the level which it had prescribed for the interstate rates, and withheld any order so requiring to afford the respective state commissions an opportunity to realign their rates accordingly.

In said proceeding the carriers and shippers, including the petitioners here, recognized, as stated by the Interstate Commerce Commission in its original report, 113 I. C. C., page 422, that a uniform level of fertilizer rates is desirable and should be established throughout southern territory.

Defendants deny that the evidence before the Interstate Commerce Commission did not justify the findings which it made in its said original report as to the Alabama intrastate rates. On the contrary, they aver that its findings, embodied in its said report and carried out in its said order of October 3, 1927, with respect to the Alabama intrastate rates, were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceeding as aforesaid; and these defendants deny each and every allegation to the contrary contained in said paragraph numbered 21 or elsewhere in said petition.

Defendants say that the findings of the Interstate Commerce Commission with respect to said Alabama intrastate rates and the scale to be used to remove the unjust and unlawful discrimination found to exist, are set forth in its said report and orders aforesaid, and they deny that said findings, or the requirements of the orders made by said Interstate Commerce Commission in regard to the intrastate rates in Alabama in any way transcend its powers,

or that said requirements, findings, or orders should have been limited to certain intrastate rates in Alabama. They aver that this very contention was advanced by the said Alabama Public Service Commission in said proceeding, was fully considered by the Interstate Commerce Commission and overruled by it. After reciting, in its original re-[fol. 75] port, at pages 431 and 432, the contention of the Alabama Commission, the Interstate Commerce Commission said:

"While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful."

It then proceeded to make the specific findings already pointed out and the requirement that the undue prejudice and unjust discrimination found to exist should be removed by applying intrastate rates not lower than those prescribed by it for interstate application.

Defendants deny that they continue voluntarily to maintain intrastate rates within the State of Mississippi lower than the said intrastate rates in effect in Alabama, or lower than the interstate rates prescribed, as aforesaid, by the Interstate Commerce Commission. They aver that following the receipt of the decision and order of the Interstate Commerce Commission in said Docket No. 16295, the principal railroads operating in Mississippi filed an application with the Railroad Commission of Mississippi to make effective intrastate in that state the same level of rates on fertilizer and fertilizer materials as had been prescribed by the Interstate Commerce Commission in said Docket No. 16295, which petition was set for hearing in November, 1927, and the hearing of which petition and action thereon has been urged by these defendants; but the hearing of said petition was postponed by the Railroad Commission of Mis-

sissippi upon the representation, as made to these and other defendants, that the personnel of the Commission would change with the first of the year 1928 and it was the desire of the retiring Commissioners that said petition should [fol. 76] be heard and decided by the incoming Commission. Defendant, Southern Railway Company, has a very limited mileage within the State of Mississippi. Defendant, Alabama Great Southern Railroad Company, has practically no mileage within Mississippi, nor has defendant, Northern Alabama Railway Company, any mileage within that State, but defendants are advised, and on information and belief aver, that preparation has been made by the principal railroads operating in the State of Mississippi for said hearing in support of said application, and that said application will be set for hearing during the month of February, 1928.

Defendants aver and plead, however, that the mandate of the order of the Interstate Commerce Commission in regard to Alabama intrastate rates cannot be avoided, nor can said order, nor the action taken in regard to intrastate rates in Alabama, be challenged or attacked by reason of the present status of the intrastate rates in Mississippi, and that said last mentioned matter is immaterial and irrelevant.

XVII

Defendants deny the allegations of paragraph 22 of said petition to the effect that said order of October 3, 1927, was made without opportunity to the Alabama Public Service Commission to be heard, and without definite findings by the Interstate Commerce Commission. On the contrary, they aver that the report of the Interstate Commerce Commission, and the record before it, show that the fullest opportunity was accorded to the Alabama Public Service Commission to be heard; that it was so heard, and presented not only evidence in oral and documentary form, but in brief and on oral argument, and after elaborate hearings specific and definite findings were made by the Interstate Commerce Commission in regard to said Alabama intrastate rates, which findings are fully set forth in its original report in Docket No. 16295.

[fol. 77] Defendants admit that Exhibit C, accompanying said petition, is a copy of the order of the Interstate Commerce Commission entered on October 3, 1927, in Docket No. 16336, consolidated and heard with said general investigation.

XVIII

The allegations of paragraph 23 of said petition relate to certain short line railroads operating in the State of Alabama, and the allegations thereof do not concern directly these defendants. Defendants believe, however, that certain named short line railroads in the State of Alabama did file a petition with the Interstate Commerce Commission seeking relief from the intrastate rates in Alabama and asking to be included in the terms of the order of October 3, 1927.

XIX

Answering paragraph 24, these defendants admit that the standard lines in Alabama, including these defendants, have printed and filed tariffs which were originally to become effective on January 3, 1928, to comply with the findings, requirement, report and order of the Interstate Commerce Commission, whereby and whereunder the intrastate rates on fertilizer and fertilizer materials within the State of Alabama would be placed on the same basis and the same level as, and which corresponded in all respects with, the rates published for interstate application effective July 1, 1927, in compliance with the reports and orders of the Interstate Commerce Commission in the General Investigation of Fertilizer Rates, Docket No. 16295. Defendants, however, aver that after the filing of the petition in this cause, and in order to afford an opportunity for the petitioners' application for a temporary restraining order and for an interlocutory injunction to be heard as required by law, the Interstate Commerce Commission extended the effective date of its said order of October 3, 1927, entered in Docket 16336, so that the effective date thereof would become February 3, 1928, in lieu of January 3, 1928, and concurrently the defendant carriers extended,

by supplement duly filed, the effective date of the appli-
[fol. 78] cable tariffs to February 3, 1928.

Answering the last sentence of paragraph 24, while it is true that Note 5 in the tariff, which originally published the interstate rates to conform to the order of the Interstate Commerce Commission in Docket 16295, made those interstate rates so prescribed and published inapplicable on intrastate traffic in Florida, Mississippi, North Carolina, South Carolina, and Virginia, it is nevertheless true, and respondents aver the fact to be, that the North Carolina Corporation Commission has authorized, for application intrastate in North Carolina, the same rates on fertilizer and fertilizer materials as were prescribed in Docket 16295; that the South Carolina Commission has likewise prescribed the same rates, with the exception of requiring a carload minimum of 30,000 pounds in lieu of 40,000 pounds; while in the State of Virginia the same rates have been prescribed for intrastate application within that state as were ordered by the Interstate Commerce Commission in Docket 16295, except for very short hauls and except that the rates on certain fertilizer materials were made 75 per cent of the rates so prescribed by the Interstate Commerce Commission.

Defendants, however, aver that 13th section petitions have been filed with the Interstate Commerce Commission in the matter of the South Carolina intrastate minimum weights, asking that the minimum be made the same as that prescribed for interstate application, and this petition has been set for hearing by the Interstate Commerce Commission; likewise, the railroads operating in the State of Virginia have filed with the Interstate Commerce Commission a 13th section petition asking that the departures made by the State Corporation Commission of Virginia from the interstate standard as prescribed and fixed by the Interstate Commerce Commission in Docket 16295 be eliminated, and [fol. 79] that the Virginia intrastate rates on fertilizer and fertilizer materials be made to conform in all respects to the interstate rates so prescribed and fixed by the Interstate Commerce Commission. Defendants are not advised, and have no definite information as to what steps have been taken in regard to the intrastate rates in Florida, as none

of these defendants operates in the State of Florida. They are advised, and upon information and belief aver, that a petition has been filed with the Louisiana Commission in regard to the territory in Louisiana east of the Mississippi River, asking that the rates in that territory on fertilizer and fertilizer materials be brought into conformity with the interstate rates as prescribed by the Interstate Commerce Commission, but none of these defendants operates any mileage within the State of Louisiana.

Defendants, however, aver that the interstate rates as prescribed by the Interstate Commerce Commission have been made effective for intrastate application in the States of Kentucky, Tennessee, North Carolina, and Georgia, and that, with the exceptions noted in the States of Virginia and South Carolina, the intrastate rates in all of the Southern States are now upon the same level as the interstate rates prescribed by the Interstate Commerce Commission in its Docket No. 16295 for application throughout southern territory, with the exception of the States of Alabama and Mississippi, and with the further exception of a small part of the State of Louisiana which lies east of the Mississippi River. As stated, defendants are not definitely advised as to what is the existing situation in the State of Florida.

XX

Respondents specifically deny each and all of the matters and things alleged in paragraph 25 of said petition, and [fol. 80] each and every part of the same in manner and form as alleged.

XXI

Defendants deny the allegations of paragraph 26 of the petition, and each and every part of the same, in manner and form as alleged.

XXII

Defendants specifically deny the allegations of paragraph 27 of said petition to the effect that said Interstate Commerce Commission, in its opinions, findings, and in its orders and judgment, acted arbitrarily or contrary to law, or contrary to the evidence, or that it made findings or

reached conclusions or entered orders without any evidence to support the same. Defendants specifically deny that said opinion, findings, conclusions, and the judgments and orders made by said Interstate Commerce Commission are invalid or arbitrary or exceed its power and authority in any respect or to any extent by reason of any of the said grounds alleged and set forth in said paragraph numbered 27.

Defendants believe and aver that in making its said reports, findings and orders, including its said order of October 3, 1927, that the Interstate Commerce Commission considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance and condition called to its attention on behalf of the parties to said consolidated proceeding, by their respective counsel, including all matters covered by the allegations of the petition here.

Defendants, answering further, deny that said order of October 3, 1927, attacked in said petition, was made and entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it. They [fol. 81] aver that in making its said order the Commission did so only after the most thorough investigation, after affording the petitioners and all other parties the fullest and most ample opportunity to be heard, and after considering and weighing not only the evidence produced by the several parties to said proceeding, including petitioners, but the very contentions which are now advanced by petitioners in their said petition here. They further aver that the matters and things of which complaint is made in the petition here were fully considered by the Interstate Commerce Commission and are foreclosed by its finding, conclusion, report, and orders based on substantial evidence, and that said petition here presented is but a repetition, to a very large extent, of the contentions made by the petitioners in said consolidated proceedings before the Interstate Commerce Commission and an effort to retry, reopen and have reconsidered the findings, report and orders of the Interstate Commerce Commission in the premises.

Defendants specifically deny the allegations of subparagraph (a) of paragraph 27 of said petition in so far as it

is there alleged that the Interstate Commerce Commission made a finding that only Section 3 of the Interstate Commerce Act was violated or that its findings and order with regard to the Alabama intrastate rates were broader than the record justified, or that said findings and the scope of its said order in regard to Alabama intrastate rates should have been limited or circumscribed in any such respect or to any such extent as that contended for in said sub-paragraphs (a) and (b) of said paragraph 27 of said petition.

Defendants deny the allegations of sub-paragraph (c). They deny the allegations of sub-paragraph (d), except the correctness of the excerpt quoted therein from the opinion of the Interstate Commerce Commission.

They deny the allegations of sub-paragraph (e), and spe- [fol. 82] cifically do they deny that the finding and judgment of the Interstate Commerce Commission in regard to the intrastate rates in Alabama was limited to a finding of a violation of Section 3, or that the only issue arising in the pleadings and the evidence was the issue between the rates existing prior to July 19, 1926, and the then current rates intrastate in Alabama. They deny that petitioners, or any of the parties to said proceeding before the Interstate Commerce Commission, have been denied the right to a full hearing, or that the due process clause of the Constitution has been violated, or that petitioners or any shippers or other interested parties have been denied a full hearing in said proceeding, in violation of any of the Acts of Congress or of any Constitutional rights.

They deny that the action taken, and the report and findings made and entered by the Interstate Commerce Commission, were made without pleadings or proof of any burden on interstate commerce, or that the said Commission acted in any way in violation of any Constitutional provision or of any provision of the Interstate Commerce Act; on the contrary, these defendants aver that the action taken and reports and orders made by the Interstate Commerce Commission in the proceeding before it, and particularly its said order of October 3, 1927, were well within its power and authority to make and enter under the provisions of the Interstate Commerce Act, and that said reports, find-

ings and order were made after full hearing and after due notice to all of the parties, including the petitioners here, and that said petitioners, who were parties to said proceeding and were heard at length therein upon the matters and things then presented, are now foreclosed and bound by the findings of fact based on substantial evidence so made by the Interstate Commerce Commission and the orders entered in pursuance thereof.

[fol. 83] Answering sub-paragraph (g), defendants deny that the Interstate Commerce Commission has fixed or prescribed, for intrastate application in Alabama, rates which are different from those prescribed for interstate application, or that the rates published by these defendants and other railroad companies operating in Alabama, in obedience to the orders of the Interstate Commerce Commission in said proceedings, are upon a different basis or level from those published for interstate application.

They deny that anything contained in sub-paragraph (h) in any way militates against the validity of the order of said Interstate Commerce Commission, or that the extent to which that Commission authorized the maintenance of the Ohio River relative adjustment conflicts in any way with the order of said Commission, or in any way could be held to invalidate its order of October 7, 1927, in regard to Alabama intrastate rates, or that any radical departures have been permitted or authorized from the mileage scale in publishing the interstate rates from Ohio River crossings to points in Alabama, Georgia, or Mississippi.

Defendants deny that the order herein attacked requires any different basis or method for revising Alabama intrastate rates than that prescribed for interstate rates throughout southern territory, or that the limited grouping permitted in connection with the publication of the interstate rates is forbidden in connection with the publication of intrastate rates.

They deny that anything contained in sub-paragraphs (i) or (j) constitute any ground whatever for assailing the report, findings, or orders of the Interstate Commerce Commission, or that that tribunal could be compelled, in passing upon interstate and intrastate rates on fertilizer and fertilizer materials applicable to domestic shipments, to take into consideration import rates on these commodities,

or that the Interstate Commerce Commission was without power to order removed the violations of the Interstate Commerce Act which it found to exist in the domestic rates applicable between points in Alabama, as contrasted with [fol. 84] the interstate rates which would be available, under its decision, to shippers of fertilizers from interstate points into Alabama, without passing upon and readjusting contemporaneously all of the import rates through any of the southern ports on fertilizer materials. Defendants aver that the determination as to the weight of the evidence in regard to discrimination and the extent of the discrimination, constituting, in the opinion and judgment of the Interstate Commerce Commission, violations of the Interstate Commerce Act, are matters which will not be reviewed and which are not subject to review where there is evidence to sustain the findings of the Interstate Commerce Commission, as there was in the record before it in these consolidated cases.

Defendants deny the allegations of sub-paragraphs (k) and (l), and they specifically deny that Section 3 of the Interstate Commerce Act was the only section pleaded as having been violated by the lower intrastate rates in effect in Alabama.

Defendants aver that said petitioners have either purposely overlooked or have disregarded the scope of the proceedings instituted by the Interstate Commerce Commission in its Docket No. 16295, and the evidence taken and submitted in said proceeding. They ignore the notice issued by the Interstate Commerce Commission, following the institution of said investigation, as to its scope and purpose, a copy of which notice is exhibited with this answer as Exhibit No. 7. They likewise ignore the fact, stated in the original report, that there were varying levels of interstate rates in southern territory concerning which numerous complaints had arisen, as well as varying levels of intrastate rates, which had likewise been productive of numerous complaints, and that it was conceded and admitted of record in said proceeding before the Interstate Commerce Commission, by all parties in interest, including petitioners, that one rate level on fertilizer and fertilizer [fol. 85] materials should be established to prevail throughout southern territory. That rate level has now been pre-

scribed and fixed by the Interstate Commerce Commission, acting within the scope of its power and jurisdiction, and on a record which amply sustains its action. The mere fact that petitioners, who were litigants and parties to said proceeding, advocated for general adoption the lowest level of rates in effect in southern territory on fertilizer and fertilizer materials, to-wit, the Alabama intrastate rates, and that they were overruled by the Interstate Commerce Commission in this regard when that Commission found and held, as it did, that the evidence justified a higher and different level of rates for general application throughout southern territory, including the State of Alabama, can certainly constitute no possible ground or excuse for attacking or calling into question the findings and order of the Interstate Commerce Commission promulgating and fixing the rates to be observed for the future throughout southern territory. That finding and order are conclusive and binding and cannot be questioned in this or any other tribunal. The position taken by petitioners ignores the fact that the issue as to the level of rates which should prevail throughout southern territory was submitted to, and tried out before, the Interstate Commerce Commission in said consolidated cases; that the tonnage used in making the revenue test required to be made by said Commission and made in said proceeding, included that handled in interstate, as well as in intrastate, commerce in southern territory and that the general level of interstate rates so prescribed was prescribed with the expectation that the intrastate rates would be made to conform therewith, as shown by the findings, conclusions and statements contained in the Commission's original report in Docket No. 16295.

Except as hereinbefore expressly admitted, these defendants deny the truth of each and all of the allegations [fols. 86 & 87] contained in said petition, in so far as those allegations conflict either with the averments herein or with the statements or conclusions of fact set forth in said reports of the Interstate Commerce Commission and the accompanying orders, copies whereof have been exhibited with and are asked to be read with and considered as a part of this answer.

Wherefore, having fully answered, defendants pray that the petition be dismissed at the cost of petitioners, and for such other and further order as may be appropriate or necessary in the premises.

Southern Railway Company, Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, Northern Alabama Railway Company, by R. E. Steiner, S. P. Smith, Charles J. Rixey, Their Solicitors.

Duly sworn to by E. R. Gardner. Jurat omitted in printing.

[fol. 88] (Exhibits Numbers 1, 2 and 3 the same as Exhibits 1, 2 and 3 attached to Answer of the United States.)

[fol. 89] CERTIFICATE OF SECRETARY OF INTERSTATE COMMERCE COMMISSION—Filed January 20th, 1928

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of petition filed August 6, 1924, by the Atlantic Coast Line Railroad Company, et al., the original of which is now on file and of record in the office of this Commission, in Case No. 16336, In the Matter of Rates on Fertilizers and Fertilizer Materials, and Articles Taking the Same Rates, Intrastate Within the State of Alabama.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 14th day of January, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 90] EXHIBIT No. 4 TO ANSWER OF ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET ALS.—Filed January 20th, 1928

[fol. 90a] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 16336

In the Matter of Rates on Fertilizers and Fertilizer Materials, and Articles Taking the Same Rates, Intrastate within the State of Alabama.

Petition

R. V. Fletcher, W. A. Northcutt, Charles J. Rixey, Frank W. Gwathmey, Henry Thurtell, M. G. Roberts, W. N. McGehee, Attorneys for Petitioners.

Washington, D. C., July 30, 1924.

[fol. 90-1] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. —.

In the Matter of Rates on Fertilizers and Fertilizer Materials, and Articles Taking the Same Rates, Intrastate within the State of Alabama.

Petition

To the Interstate Commerce Commission:

Your petitioners, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, Alabama Great Southern Railroad Company, Atlantic, Birmingham & Atlantic Railway Company, (B. L. Bugg, Receiver), Central of Georgia Railway Company, Louisville & Nashville Railroad Company, Mobile & Ohio Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company, and The Western Railway of Alabama, hereinafter called petitioners, present this petition and respectfully represent and show unto the Commission as follows:

[fol. 90-2] First

Petitioners are corporations organized and existing under the laws and the respective states in which they were incorporated. Each of your petitioners has been, for many years past, and is now, engaged in operating lines of railroad within the State of Alabama, and has been and is now engaged in the business of transportating passengers and freight intrastate between points in the State of Alabama, and is likewise engaged, and has, for years past, been engaged in transporting passengers and freight moving in interstate commerce between points in the State of Alabama and points in other states. Each of your petitioners is a common carrier of passengers and freight by railroad, subject to the provisions of the Acts of Congress known as the Interstate Commerce Act and the Transportation Act of 1920, and is a party to and participates in through interstate freight routes and through interstate freight rates—including rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads—and tariffs applicable between points in the State of Alabama and points in other states.

Second

Petitioners further show that by Section 422 of the Transportation Act, 1920, this Honorable Commission is required to initiate, modify, establish or adjust rates (which by the express definition of said section includes rates, fares and charges, and all classifications, regulations and practices relating thereto), so that the carriers as a whole in each rate group which the Commission may designate, [fol. 90-3] will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income, as in said section defined, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation; and that for the two years beginning March 1, 1920, the Commission should take as such fair return a sum equal to five and one-half per cent of such aggregate value, but might, in its discre-

tion, add thereto a sum not exceeding one-half of 1 per cent of such aggregate value to make provision for the uses and purposes of said section prescribed.

It was thus made the duty of this Honorable Commission to establish such rates as would produce from all traffic, state and interstate, of such carriers, for the two years beginning March 1, 1920, an annual net railway operating income in the aggregate equal to five and one-half or six per cent, as the case may be, of the aggregate value of the railway property of the carriers in the group held for and used in the service of transportation.

This Honorable Commission must, therefore, under the express requirements of the law, make up and provide out of rates on interstate traffic all of the required amount of net revenue prescribed by the act that is not contributed by the state traffic of the carriers in the group.

Third

Petitioners show that in the latter part of April and the early part of May, 1920, applications were filed by the railroad companies of the United States, including petitioners, [fol. 90-4] wherein this Commission was requested to increase rates, fares and charges, so that the railroads might earn the net railway operating income provided by law. Upon the filing of these applications, hearings were had before your Honorable Commission and as a result of these hearings this Commission promulgated, on the twenty-ninth of July, 1920, its report and order in the cause designated on the docket of this Commission as Ex Parte 74, and styled, "In the Matter of the Applications of Carriers in Official, Southern and Western Classification Territories for Authority to Increase Rates." This report and accompanying order are respectfully asked to be made a part of this petition.

Fourth

Your petitioners further show that, as will appear from page 229 of said report, this Commission, in accordance with the provisions of the Transportation Act and for the purposes of Ex Parte 74, tentatively determined the aggregate value of all the property of the carriers held for and

used in the service of transportation to be $18,900,000,000. In making this tentative valuation, this Commission did not undertake to separate, and did not separate, property devoted to the purpose of interstate transportation from property devoted to intrastate transportation, so that the values found in the report include the property of carriers, whether used in interstate or intrastate transportation.

Fifth

In its opinion in Ex Parte 74, this Commission, acting under authority of the Transportation Act, divided the United States into four groups for rate-making purposes. [fol. 90-5] The territorial limits of these groups are fully set out in this opinion, and need not be here repeated. The State of Alabama lies within the Southern Group. The Commission found that the carriers were entitled to earn six per cent upon the aggregate value of the property in each group devoted to the service of transportation, and that, in order to earn that return, the following increase (among others) should be made in the Southern Group in all rates, fares and charges, whether applicable upon interstate or intrastate traffic:

Freight transportation rates, switching charges and other special charges enumerated in the report were permitted to be increased twenty-five per cent.

Sixth

Petitioners further show that this Commission, in authorizing an increase in the rates, fares and charges for the transportation of freight and passengers, did not determine and conclude that the increases permitted and directed in Ex Parte 74 should apply only to interstate transportation, but it was determined by this Commission that the increases there allowed, if applied both to interstate and intrastate traffic, would yield no more than was necessary to permit the carriers to earn six per cent upon the value of their property held for and used in the service of transportation. In other words, there was no attempt made by this Commission to make any separation between interstate revenue and intrastate revenue, or between the

expenses for handling interstate traffic and the expenses for handling intrastate traffic.

[fol. 90-6] Seventh

There were present and participating in the proceedings before this Commission in Ex Parte 74 representatives of the State Commissions, including the Alabama Public Service Commission.

Eighth

Petitioners state that, as will be seen from an examination of the report in Ex Parte 74, it was necessary for the carriers to have the stated increases in freight rates and passenger fares and other charges in order that their net income might equal the amount provided in the Transportation Act, and if they were not permitted to increase intrastate freight rates, as well as passenger fares and other charges, in the State of Alabama in the amounts permitted by this Commission, the railroads in the Southern Group, in which the State of Alabama was situated, would fail to earn the amount of net revenue authorized in the Transportation Act.

Petitioners further show that this Honorable Commission having in Ex Parte 74, in the performance of its duties under the Act, determined the amount of net revenue required by Section 422 of the Transportation Act, 1920, and having declared that this amount should be provided by a uniform increase of rates applicable alike to interstate and intrastate traffic in the group, it was obvious that if the intrastate rates in any state were not increased to correspond with the increases authorized and made in interstate rates under the decision and order of this Commission in Ex Parte 74, the carriers in that particular group would not receive the net railway operating income [fol. 90-7] which this Commission intended they should receive and to which this Commission found they were entitled, unless the deficit so produced was made good by a further increase in the rates on interstate traffic.

Ninth

Following the decision of the Commission in Ex Parte 74, petitioners made application to the Alabama Public Service Commission for authority, among other things, to increase freight rates and charges, including rates and charges on fertilizers and fertilizer materials, and articles taking the same rates, intrastate in the State of Alabama, in the same amount and to the same extent that this Commission, in Ex Parte 74, authorized increases in rates and charges for interstate transportation.

A hearing was held on such application before the Alabama Public Service Commission on August 17, 1920, with the result that the said Alabama Commission, on August 20, 1920, entered its order, known as Docket No. 3009, wherein and whereby the said Alabama Commission found that the increases sought by the carriers, including increases in the rates and charges on fertilizers and fertilizer materials, and articles taking the same rates, were reasonable and proper, and should be granted, with certain exceptions. The increased rates authorized by the said Alabama Commission on fertilizers and fertilizer materials, and articles taking the same rates, became effective on September 1, 1920, and remained in effect until July 1, 1922.

[fol. 90-8] Tenth

Your petitioners further show that on or about December 1, 1921, this Commission instituted a proceeding of its own motion, bearing the title, "Reduced Rates, 1922, in the Matter of Rates, Fares and Charges of Carriers by Railroad Subject to the Interstate Act," Docket No. 13292.

The purpose of this investigation was to determine what should be on and after March 1, 1922, a fair return upon the value of the property of the carriers held for and used in the service of transportation; what was the aggregate value of such property; and what rate reductions or changes, if any, should be made in order that the carriers might earn such fair return upon the value of their property.

In said proceeding, testimony was heard, arguments were had, and, on May 16, 1922, this Commission filed its report

in the said cause, among other things, fixing five and three-quarters per cent (5¾%) as a reasonable rate of return upon the aggregate value of railway property of carriers, and recommending that a horizontal decrease of approximately ten per cent be made in all existing rates, with certain exceptions set out fully in the report, which exceptions dealt with rates which had been voluntarily or otherwise reduced by the carriers between August 26, 1920, and May 16, 1922. So far as Southern territory was concerned, this reduction was brought about by requiring the carriers to publish rates which would be 12½ per cent higher than the rates in effect on August 25, 1920, the day prior to the effect in date of the increases allowed in Ex Parte 74, with the exceptions already noted. This recommendation of the [fol. 99-9] Commission was accepted by petitioners and practically all other carriers operating in the United States, and, as a result of this decision, effective July 1, 1922, interstate rates and intrastate rates throughout the United States were reduced in the amounts recommended by the Commission in its said decision in Docket 13293.

Your petitioners and all other carriers in the State of Alabama, effective July 1, 1922, voluntarily reduced all intrastate rates, including the rates on fertilizers and fertilizer materials, and articles taking the same rates, to the same basis and by the same amounts as corresponding interstate rates were reduced. The rates so established, effective July 1, 1922, on fertilizers and fertilizer materials, and articles taking the same rates, intrastate in Alabama, remained in effect without change until July 25, 1924.

Eleventh

At the hearings in Reduced Rates, 1922, fertilizer manufacturers sought reductions in the then existing rates on fertilizers and fertilizer materials, in Southern territory, of approximately 22 per cent. The Commission, in its report and order, declined to make a greater reduction in the rates on fertilizers and fertilizer materials in Southern territory than the reductions which it ordered therein in rates on classes and commodities generally in Southern territory.

In its report in that proceeding, the Commission said:

"The fertilizer for use in production of this year's crops has already moved, but the annual movement of raw materials into the fertilizer plants does not begin until May. [fol. 90-10] Fertilizer manufacturers ask that reductions ranging from 20 to 25 per cent be made on fertilizer materials and that on fertilizer we prescribe for the Southern group a distance scale of rates suggested by them. This scale would involve a reduction of approximately 22 per cent under the scale prescribed by us in Royster Guano Co. v. A. C. L. R. R., 50 I. C. C., 34, as subsequently increased." (68 I. C. C. 719.)

Twelfth

In September, 1921, the Alabama Public Service Commission initiated upon its own motion a general investigation with respect to the entire rate structure in the State of Alabama, including the rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads.

On May 26, 1924, after hearings, the Alabama Public Service Commission entered its report and order in its Docket No. 4136 insofar as that proceeding related to rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads. By its order of May 26, 1924, the carriers operating in the State of Alabama were required to publish, within sixty days from the date of said order, certain rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for application intrastate in the State of Alabama, excepting only rates between points in Alabama within the scope of the decisions of the Interstate Commerce Commission in the Meridian case, 60 I. C. C. 5, and 66 I. C. C. 179. A copy of the said order of the Alabama Public Service Commission is hereto attached as Exhibit "A" and made a part of this petition.

The rates ordered established by the Alabama Public [fol. 90-11] Service Commission were published by petitioners under protest, and became effective July 25, 1924, and are now being applied, in accordance with the terms of the said order of the Alabama Commission.

The effect of the aforesaid order of the Alabama Public Service Commission was to very substantially reduce the

revenues of the carriers on fertilizers and fertilizer materials, and articles taking the same rates, moving intrastate between points in the State of Alabama.

Petitioners show that the intrastate rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, in effect intrastate in Alabama prior to July 25, 1924, were reasonably low rates, and, on the whole, lower than the level of interstate rates applying from points in other states to Alabama destinations, which interstate rates were not and are not above the level of reasonable rates.

Thirteenth

Petitioners aver that the rates prescribed by the Alabama Public Service Commission, in its said order of May 26, 1924, on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for intrastate application between points in the State of Alabama, and now in effect, give an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Alabama on the one hand, and persons and localities in interstate commerce on the other hand, and are unjustly discriminatory against interstate commerce and place an undue burden upon interstate commerce, in violation of Section 3 and subdivisions 3 and 4 of Sec-
[fol. 90-12] tion 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920.

Petitioners further show that if the said rates on fertilizers and fertilizer materials, and articles taking the same rates, so established by the Alabama Public Service Commission are allowed to remain in effect, the purpose of the Interstate Commerce Act will be defeated and the result will be an undue and unreasonable advantage, preference or prejudice between persons and localities in interstate commerce on the one hand, and intrastate commerce on the other, and that the interstate commerce will be unduly, unreasonably and unjustly discriminated against; all of which is forbidden and declared to be unlawful by the Interstate Commerce Act.

Fourteenth

In order that this Commission may see to what extent the rates ordered in by the Alabama Public Service Com

mission on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, will operate to the prejudice and disadvantage of persons, firms and localities in interstate commerce, your petitioners here set out a few typical instances of state and interstate rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, to representative Alabama destinations.

Manufacturers of fertilizers and dealers in fertilizer materials located in Atlanta, Georgia, actively compete at Alabama points with manufacturers of and dealers in fertilizers and fertilizer materials at Birmingham and other points in Alabama. Heflin, Alabama, is a station on the main line of the Southern Railway between Atlanta and [fol. 90-13] Birmingham, 85 miles from Atlanta and 82 miles from Birmingham. Prior to July 25, 1924, the rate on fertilizers and fertilizer materials, in carloads, from Birmingham to Heflin, was $2.03 per ton, as compared with a rate of $2.59 per ton from Atlanta to Heflin. Under the order of the Alabama Public Service Commission, the rate from Birmingham to Heflin was reduced to $1.80 per net ton, thus increasing the advantage already enjoyed by Birmingham manufacturers and dealers in fertilizers in their rates to Heflin as compared with the rates paid by their competitors from Atlanta to Heflin. Transportation conditions from Birmingham to Heflin are not more favorable than those obtaining from Atlanta to Heflin.

Manufacturers of fertilizers and dealers in fertilizers and fertilizer materials in Atlanta, Georgia, actively compete at Alabama points with manufacturers of and dealers in fertilizers and fertilizer materials at Montgomery, Alabama. Lanette, Alabama, is a station on the Western Railway of Alabama 87 miles from Montgomery and 88 miles from Atlanta. Prior to the effective date of the order of the Alabama Public Service Commission of May 26, 1924, the rate on fertilizers and fertilizer materials, in carloads, from both Montgomery and Atlanta to Lanette was $2.03 per net ton. Under the order of the Alabama Public Service Commission, the rate from Montgomery to Lanette was reduced to $1.85 per net ton, thus giving the Montgomery manufacturers and dealers in fertilizers an advantage of 18 cents per ton on shipments to Lanette, as compared with their competitors in Atlanta. Transportation conditions from

Montgomery to Lanette are not more favorable than those obtaining from Atlanta to Lanette.

[fol. 90-14] Fertilizers and fertilizer materials have in the past moved in considerable volume from both McCarty, Tennessee, and Birmingham, Alabama, to stations on the Alabama Great Southern Railroad between Birmingham and Chattanooga. Keener, Alabama, is a station on the Alabama Great Southern 68 miles from Birmingham and 73 miles from McCarty. Prior to the effective date of the order of the Alabama Public Service Commission of May 26, 1924, the rate on fertilizers and fertilizer materials from Birmingham to Keener was $2.14 per ton, and from McCarty $2.25 per ton. Under the aforesaid order of the Alabama Public Service Commission, the rate from Birmingham to Keener was reduced from $2.14 to $1.65 per ton, thus increasing the advantage of the Birmingham manufacturers and dealers in fertilizers 49 cents per ton, as compared with the manufacturers at McCarty on shipments to Keener.

Athens, Alabama, is a station on the main line of the Louisville & Nashville Railroad between Birmingham, Alabama, and Nashville, Tennessee, 100 miles from Birmingham and 108 miles from Nashville. Prior to the effective date of the order of the Alabama Public Service Commission of May 26, 1924, the rate on fertilizers and fertilizer materials, in carloads, from both Birmingham and Nashville to Athens was $2.50 per net ton. The effect of the order of the Alabama Public Service Commission was to reduce the rate from Birmingham to Athens to $1.95 per net ton, which rate is 64 cents per net ton less than the present reasonably low interstate rate from Nashville to Athens. Transportation conditions from Birmingham to Athens are not more favorable than those obtaining from Nashville to Athens.

[fol. 90-15] Your petitioners show that they have set out only two or three examples showing a manifest discrimination against interstate commerce and manifest prejudice and disadvantage to persons and localities engaged in interstate commerce in favor of intrastate commerce and persons and localities engaged in intrastate commerce. The few instances above given are illustrative of and represent a situation which prevails generally as to inter-

state rates on fertilizers and fertilizer materials and articles taking the same rates, from points in states other than Alabama to Alabama destinations, as compared with Alabama intrastate rates on fertilizers and fertilizer materials, and articles taking the same rates, prescribed by the Public Service Commission of Alabama and now in effect.

The State of Alabama consumes several hundred thousand tons of fertilizers and fertilizer materials, and articles taking the same rates, annually, and such materials have, in the past, moved in considerable volume from interstate destinations particularly from points in Tennessee, Georgia and Mississippi, to Alabama destinations.

Fifteenth

Your petitioners aver that the interstate rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, now in effect from points in Georgia, Florida, Tennessee, Mississippi and other states, to Alabama destinations are in all respects reasonably low rates. Petitioners further aver that the rates prescribed by the Alabama Public Service Commission on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for intrastate application between points in Alabama, and now in effect, are unreasonably and unduly low. [fol. 90-16] Petitioners further show that the rates so prescribed by the Alabama Public Service Commission are generally materially lower than interstate rates on fertilizers and fertilizer materials, in carloads, prescribed by this Commission, after extensive hearings and investigations, for application between points in Alabama and Meridian, Mississippi, and from points in Alabama to points in Georgia.

Petitioners further show that there are no transportation conditions or other conditions which warrant or justify a level of rates intrastate in Alabama lower than the level of interstate rates between points in Alabama and points in contiguous states, or elsewhere in the same general territory.

Sixteenth

One of the effects of the order of the Alabama Public Service Commission and the reduced rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, established and made effective by petitioners intrastate between points in the State of Alabama in obedience to said order, will be to greatly reduce the revenues of petitioners derived from the transportation of fertilizers and fertilizer materials, and articles taking the same rates, in carloads, intrastate between points in Alabama.

Petitioners further show that they are advised and believe that manufacturers and dealers in fertilizers located in states other than Alabama will find it extremely difficult, if not impossible, to continue to ship fertilizers and fertilizer materials, and articles taking the same rates, into Alabama on the present reasonably low intrastate rates, in competition with Alabama dealers and manufacturers [fol. 90-17] who on the extremely and unreasonably low rates prescribed by the Alabama Public Service Commission. Alabama consumers will discontinue buying large quantities of fertilizers and fertilizer materials, and articles taking the same rates, at points in other states, and this tonnage which has moved in the past on reasonably low interstate rates, will be supplanted by tonnage from Alabama points which will move on the unduly and unreasonably low Alabama intrastate rates, which rates are generally materially less than the reasonable interstate rates into Alabama, thereby resulting in great loss of revenue to petitioners.

Wherefore your petitioners pray on their own behalf and on behalf of all of the carriers operating in the State of Alabama, that this Commission institute at an early date an investigation with respect to the matters and things herein set forth, and that after due notice has been given to the State of Alabama and the authorities thereof, and after such hearing or hearings as the Commission may direct, an order be entered by this Commission declaring the rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, so established by the Alabama Public Service Commission, to be unlawful and

to cause an undue and unreasonable advantage, preference and prejudice as between persons and localities in interstate commerce on the one hand and intrastate commerce on the other, and undue, unreasonable and unjust discrimination against interstate commerce, and that there be taken in the premises all such further proceedings, and that there be entered all such further order or orders as may be necessary to remove this unjust and undue discrimi-[fol. 90-18] nation, as set out in this petition and as may be shown as the result of the investigation to be ordered by this Commission.

And petitioners will ever pray.

Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, Alabama Great Southern Railroad Company, Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), Central of Georgia Railway Company, Louisville & Nashville Railroad Company, Mobile & Ohio Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, St. Louis San Francisco Railway Company, Illinois Central Railroad Company, Western Railway of Alabama, by R. V. Fletcher, W. A. Northcut, Charles J. Rixey, Frank W. Gwathmey, Henry Thurtell, M. G. Roberts, W. N. McGehee, Attorneys for Petitioners.

Washington, D. C., July 30, 1924.

[fol. 90-19] Exhibit "A"

STATE OF ALABAMA:

ALABAMA PUBLIC SERVICE COMMISSION, MONTGOMERY
ALABAMA PUBLIC SERVICE COMMISSION

vs.

ALABAMA, FLORIDA & GULF RAILROAD COMPANY, and All Other Railroads in Alabama

Citation: To show cause why this Commission should not establish a just and reasonable scale of freight rates on all commodities moving between stations on your respective lines in Alabama

Docket 4136

Rates on Fertilizer, Fertilizer Materials, and Related Articles

Order

This cause coming on to be heard before the Alabama Public Service Commission, and the parties having appeared and submitted their evidence, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which is hereby referred to and made a part hereof—

It is ordered by the Commission, That the respondent railroads be, and they are hereby, authorized, directed and required, jointly and severally, according as their interests may appear, within sixty days from this date, to publish, file and put into effect, in the manner prescribed by law, [fol. 90-20] and thereafter to charge, impose and maintain, until the further order of this Commission, on Alabama intrastate traffic moving in carloads, the scales of schedules of maximum rates shown in Appendix "C" to the report herein, except that the railroads designated in the report as short lines may, if they so desire, publish, apply and observe the scales or schedules of rates shown in said Appendix "C" for the standard lines; and,

It is further ordered by the Commission, That the said respondent railroads shall publish, use and observe, in connection with the scales or schedules of rates mentioned in the next preceding paragraph, the list of articles or commodities and commodity descriptions published and shown in Southern classification No. 46, Agent E. H. Dulaney's I. C. C. No. 15, and the supplements thereto in force and effect on this date, under the rating of "Fertilizer, carloads," except as shown in the next succeeding paragraph; and,

It is further ordered by the Commission, That the respondent railroads may publish, use and maintain, in connection with the scales or schedules of rates and list of articles or commodities shown in the two preceding paragraphs, the same minimum carload weights as shown in the classification mentioned in the next preceding paragraph where such minimum carload weights are higher than 30,000 pounds, and that where such minimum carload weights are now 30,000 pounds or less (except on cottonseed hulls, carloads, the minimum carload weight of which shall not be higher than 30,000 pounds) they may be increased to 40,000 pounds; and,

It is further ordered by the Commission, That the basis for constructing or making less than carload rates on the articles or commodities involved herein now authorized and published in the said Southern Classification No. 46, Agent E. H. Dulaney's I. C. C. No. 15, and the supplements thereto in force and effect on this date, shall be published and ob- [fol. 90-21] served by the carriers in connection with the carload rates herein authorized and required.

Dated at Montgomery, Alabama, May 26, 1924.

Alabama Public Service Commission, by A. G. Patterson, President.

I hereby certify that the above and foregoing is a true and correct copy of order entered in the above cause on this the 26th day of May, 1924.

Jno. Brandon, Secretary.

Appendix "C"

Maximum Commodity Rates on Fertilizer, Fertilizer Materials, and Related Articles, Carloads

Rates in Cents per Ton of 2,000 Pounds

Distance	1	2	3	4	5
5	80			96	
10	90	120	132	108	138
15	100	130	143	120	150
20	110	140	144	132	162
25	120	150	155	144	174
30	125	155	171	150	180
35	130	160	176	156	186
40	135	165	182	162	192
45	140	170	187	168	198
50	145	175	193	174	204
55	150	180	198	180	210
60	155	185	204	186	216
65	160	190	209	192	222
70	165	195	215	198	228
75	170	200	220	204	234
80	175	205	226	210	240
[fol. 90-22]					
85	180	210	231	216	246
90	185	215	237	222	252
95	190	220	242	228	258
100	195	225	248	234	264
110	205	235	259	246	276
120	215	245	270	258	288
130	225	255	281	270	300
140	235	265	292	282	312
150	245	275	303	294	324
160	255	275	303	306	326
170	265	285	314	318	338
180	275	295	325	330	350
190	285	305	336	342	362
200	295	315	347	354	374
210	305	325	358	366	386
220	315	335	369	378	398

Distance	1	2	3	4	5
230	325	345	380	390	410
240	335	355	391	402	422
250	345	365	402	414	434
260	355	375	413	426	446
280	365	385	424	438	458
300	375	395	435	450	470
320	385	405	446	...	...
340	395	415	457	...	...
360	405	415	457	...	...
380	415	425	468	...	...
400	425	435	479	...	...
420	435	445	490	...	...
440	445	455	501	...	...
460	455	465	512	...	...
480	465	475	523	...	...
500	475	485	534	...	...
520	485	485	534	...	...

Explanation of Columns

The specific commodity Rate Tables shown above shall be applied as follows:

Rate Table No. 1. For single-line application between points within this state for the maximum distance of each [90-23] line referred to in the report as short lines.

Rate Table No. 2. For joint-line application between points within this state located on two or more of the severally named railroads referred to in the report as standard lines.

Rate Table No. 3. For joint-line application between points within this state where the commodity moves over one or more standard lines and over one or more short lines included in the report.

Rate Table No. 4. For single-line application between points within this state for the maximum distance of each line referred to in the report as short lines.

Rate Table No. 5. For joint-line application between points within this state where the commodity moves exclusively over two or more of the carriers referred to in the report as short lines.

[fol. 91] **Certificate of Secretary of Interstate Commerce Commission—Filed January 20th, 1928**

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of order of the Commission entered October 14, 1924, in Case No. 16336, Rates on Fertilizers and Fertilizer Materials Within the State of Alabama, the original of which is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 12th day of January, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 92] Exhibit Number 5 to Answer of Alabama Great Southern Railway Company et als.—Filed January 20th, 1928

Copy

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 14th Day of October, A. D. 1924

No. 16336

Rates on Fertilizers and Fertilizer Materials Within the State of Alabama

Order

It appearing, That a petition has been filed on behalf of all the steam railroads operating in the state of Alabama averring that the Alabama Public Service Commission by order promulgated on the 26th day of May, 1924, required petitioners to establish rates on fertilizers and fertilizer materials within said state which are less than those permitted or required to be established by this Commission for interstate traffic;

It further appearing, That said petitioners allege that the observance by themselves of said order of the Alabama Public Service Commission will cause and result in undue and unreasonable preference and advantage to intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce and will result in unjust and unreasonable discrimination against interstate commerce;

And it further appearing, That by the said petition there have been brought in issue rates imposed by the authority of the state of Alabama:

It is ordered, (1) That an investigation be, and it is hereby, instituted to determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist;

(2) That all railroads subject to our jurisdiction operating within said state of Alabama be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the state of Alabama be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Alabama, at Montgomery, Ala., and to the Alabama Public Service Commission, at Montgomery, Ala.

(3) That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C.

(4) That this proceeding be assigned for hearing at such time and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 93] Certificate of Secretary of Interstate Commerce Commission—Filed January 20th, 1928

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of order of the Commission entered October 7, 1924, in Case No. 16295, Fertilizers and Fertilizer Materials Between Southern Points, the original of which is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 12th day of January, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 94] Exhibit Number 6 to Answer of Alabama Great Southern R. R. Co. et als.—Filed January 20th, 1928

Copy

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 7th Day of October, A. D. 1924

No. 16295

Fertilizer and Fertilizer Materials Between Southern Points

Order

It appearing, That in many instances interstate rates on fertilizers, fertilizing compounds, and fertilizer materials between points in southern classification territory differ materially for substantially similar hauls and that many

of said rates are higher for shorter distances than for longer distances over the same line or route;

And it appearing, from numerous formal and informal complaints to this commission, that said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials are in general unsatisfactory to shippers thereunder, that a general revision thereof has been proposed by the carriers serving said territory, and that petitions have been filed by carriers operating in the states of South Carolina and Alabama, alleging that the rates on fertilizers and fertilizer materials in effect within those states cause undue and unreasonable advantage, preference and prejudice as between persons and localities in interstate commerce on the one hand and intrastate commerce on the other;

It is ordered, That a proceeding of investigation and inquiry be, and it is hereby, instituted by this commission on its own motion into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefor, applicable between points in the territory described in the next following paragraph, with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

It is further ordered, That said proceeding of investigation and inquiry shall include said rates and charges applicable in interstate commerce between points in the following territory:

1. Between points in the states of Kentucky (except local points on the Chesapeake & Ohio Railway), Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, and Louisiana east of the Mississippi River; also between points on the north bank of the Ohio River, Cairo, Ill., to Cincinnati, Ohio, inclusive, and Helena, Ark., on the one hand, and points in the above-named states on the other.

2. Between points in the state of Virginia on the one hand and points in the state of Kentucky (except local points on the Chesapeake & Ohio Railway and south bank Ohio River crossings), Tennessee, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Louisiana east of the Mississippi River on the other.

It is further ordered, That the common carriers named in the appendix hereto be, and they are hereby, made respondents to the proceeding.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 95] Appendix

Aberdeen and Rockfish Railroad Company; Alabama Central Railroad Company; Alabama Central Railway; The Alabama Great Southern Railroad Company; Alabama Northern Railway Company and R. L. Schuessler, Receiver; Alabama, Tennessee & Northern Railroad Corporation; Alabama and North Western Railroad Company; The Alabama and Vicksburg Railway Company; Albany Southern Railroad Company; Albemarle Steam Navigation Company; Alcoln Railroad Company; The Andalusia, Florida and Gulf Railway Company; Appalachian Railway Company; Apalachicola Northern Railroad Company; Asheville Southern Railway Company; The Asheville and Craggy Mountain Railway Company; Atlanta, Birmingham & Atlantic Railway Company and B. L. Bugg, Receiver; The Atlanta, Stone Mountain & Lithonia Railway Company; Atlanta & St. Andrews Bay Railway Company; Atlanta and West Point Railroad Company; Atlantic Coast Line Railroad Company; Atlantic and Yadkin Railway Company and A. E. Smith and J. W. Fry, Receivers; Augusta-Aiken Railway & Electric Corporation; Augusta Northern Railway; Augusta and Summerville Railroad Company; Augusta Savannah Line (M. H. Rowse and E. J.

Black, owners); Baltimore & Carolina Steamship Company of Baltimore City; The Baltimore & Ohio Railroad Company; The Baltimore & Virginia Steamboat Company; Bamberg, Ehrhardt & Walterboro Railway Company; Batesville Southwestern Railroad Company, Estate of R. J. Darrell, Lessee; Belt Railway Company of Chattanooga; Bennett's North Carolina Line; Bennettsville and Cheraw Railroad Company; Birmingham Belt Railroad Company; Birmingham, Columbus & St. Andrews Railroad Company, and S. A. Alford, Receiver; Birmingham and Northwestern Railway Company; Birmingham, Selma and Mobile Railroad Company; Birmingham Southern Railroad Company; Birmingham & Southeastern Railway Company, and Winton M. Blount and John T. Cochrane, Receivers; Black Mountain Railroad Company; Blue Ridge Railway Company; Bonlee & Western Railway Company; Bowdon Railway Company; Buffalo, Union-Carolina Railroad; Buxton Line, Incorporated; Cadiz Railroad Company; Caloosahatchie River Steamboat Company; Carolina Railroad Company; Carolina, Clinchfield and Ohio Railway; Carolina, Clinchfield and Ohio Railway of South Carolina; Carolina & Northeastern Railroad Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; Carolina Western Railroad; Carrollton & Worthville Railroad Company; Cashie River Line; Central of Georgia Railway Company; Charleston & Western Carolina Railway Company; Charlotte Harbor and Northern Railway Company; The Charlotte, Monroe and Columbia Railroad Company; Chattahoochie Valley Railway Company; Chesapeake Western Railway; The Chesapeake and Ohio Railway Company; Chesterfield and Lancastern Railroad Company; Chicago, Memphis & Gulf Railroad Company; Cincinnati, Burnside & Cumberland River Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Cliffside Railroad Company; Clyde Steamship Company; Collins & Glenville Railroad Company; Columbia, Newberry & Laurens Railroad Company; Columbus and Greenville Railway Company; Cumberland Railway Company; The Cumberland Railroad Company, and J. R. Campbell, Receiver; Cumberland Transportation Company; Cumberland & Manchester Railroad Company;

Danville and Western Railway Company; DeKalb & Western Railroad Company; The Dover and South Bound Railroad Company; Durham and Southern Railway Company; East Carolina Railway; The East Tennessee and Western North Carolina Railroad Company; East and West Coast Railway; Eastern Carolina Transportation Company; Edgemoor & Manetta Railway Company; Ensley Southern Railway Company; Elkin & Allegheny Railroad Company; The Evansville & Bowling Green Packet Company; Fernwood, Columbia & Gulf Railroad Company; Flemingsburg & Northern Railroad Company; Flint River and Northeastern Railroad Company; Florida Central and Gulf Railway; Florida East Coast Railway Company; Frankfort and Cincinnati Railway Company; French Broad Railroad Company; Gainesville Midland Railway and Gordon C. Carson and W. B. Veazey, Receivers; Gainesville & Northwestern [fol. 96] Railroad Company; Garyville Northern Railroad Company; Georgia Railroad; Georgia, Ashburn, Sylvester & Camilla Railway Company; Georgia, Florida and Alabama Railway Company; The Georgia Northern Railway Company; Georgia Southern and Florida Railway Company; The Georgia Southwestern and Gulf Railroad Company; Georgia and Florida Railway, and John Skelton Williams, Receiver; Greene County Railroad Company; Greenville and Northern Railway Company; Gulf, Mobile and Northern Railroad Company; Gulf and Ship Island Railroad Company; Gulf and Southern Steamship Company; Gulfport and Mississippi Coast Traction Company; Hampton & Branchville Railroad and Lumber Company; Harriman and Northeastern Railroad Company; Hartwell Railway Company; High Point, Randleman, Asheboro and Southern Railroad Company; High Point, Thomasville & Denton Railroad Company; Illinois Central Railroad Company; Independent Line Steamers; Interstate Railroad Company; Jackson & Eastern Railway Company; Kentucky & Indiana Terminal Railroad Company; Kentucky & Tennessee Railway; Kentucky, Rockcastle & Cumberland Railroad Company; The Kinston-Carolina Railroad Company; Knoxville & Carolina Railroad Company; Kissimmee River Railway; Kosciusko & South Eastern Railroad Company; Lancastern and Chester Railway Company; Laurel

Fork Railway Company; Laurinburg & Southern Railroad Company; Lawndale Railway and Industrial Company; Linville River Railway Company; The Little River Railroad Company; Live Oak, Perry and Gulf Railroad Company; Loranger, Louisiana & Northeastern Railroad Company, and A. Loranger, Receiver; Louisiana Railway & Navigation Company; Louisville, Henderson and St. Louis Railway Company; Louisville, New Albany & Corydon Railroad Company; Louisville and Nashville Railroad Company; Louisville and Wadley Railroad Company; Macon, Dublin and Savannah Railroad Company; Mammoth Cave Railroad Company; Manistee & Repton Railroad Company, Inc.; Manteo-Norfolk Transportation Company; The Marianna & Blountstown Railroad Company; Marion & Rye Valley Railway Company; Marion and Southern Railroad Company; Maxton, Alma and Southbound Railroad Company; Merchants & Miners Transportation Company; Milltown Air Line Railway; Milstead Railroad Company; Mississippi & Alabama Railroad Company; Mississippian Railway; Mississippi Central Railroad Company; Mississippi Eastern Railway Company; Mississippi Export Railroad Company; Mississippi Southern Railroad; Mississippi-Warrior Service; Mississippi & Western Railroad Company; Mobile and Ohio Railroad Company; Moore Haven and Clewiston Railway Company; Morgan & Fentress Railway Company; Muscle Shoals, Birmingham & Pensacola Railway Company; Nashville & Atlantic Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Nashville Interurban Railway; Natchez, Columbia & Mobile Railroad Company; Natchez & Southern Railway Company; Nelson & Albemarle Railway Company; The New Holland, Higginsport & Mt. Vernon Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany and Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; New Orleans and Northeastern Railroad Company; Norfolk Southern Railroad Company; Norfolk & Mobjack Bay Steamboat Company; Norfolk and Portsmouth Belt Line Railroad Company; Norfolk and Washington Steamboat Company; Norfolk and Western Railway Company; Northern Alabama Railway Company; North River Line, Inc.;

North Western Railroad Company of South Carolina; Norton and Northern Railway; Ocean Steamship Company of Savannah; Ohio & Kentucky Railway Company; Oneida & Western Railroad Company; Paducah & Illinois Railroad Company; Palatka & Jacksonville Steamboat Line; Pearl River Transportation Company; Pearl River Valley Railroad Company; Peninsular and Occidental Steamship Company; The Pennsylvania Railroad Company; Pensacola, St. Andrews and Gulf Steamship Company; The Pickens Railroad Company; Piedmont and Northern Railway Company; Pigeon River Railroad Company; Pontchartrain Railroad Company; Raleigh and Charleston Railroad Company; Randolph and Cumberland Railway Company and J. S. Crews, Receiver; Richmond, Fredericksburg and Potomac Railroad Company; Roanoke Railway Company; Roanoke [fol. 97] River Steamboat Company; Rockcastle River Railway Company; Rockingham Railroad Company; Rome & Northern Railway Company; Rosslyn Connecting Railroad Company; St. Johns River Terminal Company; St. Louis-San Francisco Railway Company; St. Louis & Tennessee River Packet Company; St. Marys Railroad Company; Salmon Creek Line; Sandersville Railroad Company; The Sardis and Delta Railroad Company; Savannah and Atlanta Railway, and Charles E. Gay, Jr., and Thomas B. Felder, Receivers; Savannah and Statesboro Railway Company; Seaboard Air Line Railway Company; Shearwood Railway Company; The Sievern & Knoxville Railroad Company; Smithfield, Newport News & Norfolk Steamship Company; Smithonia & Dunlap Railroad Company; Smoky Mountain Railway Company; The South Georgia Railway Company; Southern Railway Company; State University Railroad Company; Statesboro Northern Railway (Georgia & Florida Railway, John Skelton Williams, Receiver, Lessee); Sumpter & Choctaw Railway Company; Sylvania Central Railway Company; Talbotton Railroad Company; Tallulah Falls Railway Company, and J. F. Gray, Receiver; Tampa Northern Railroad Company; Tampa Southern Railroad Company; Tampa & Gulf Coast Railroad Company; Tampa & Jacksonville Railway Company; Tampa-St. Petersburg Transportation Company; Tavares & Gulf Railroad; Tennessee & Carolina Southern Railway

Company; Tennessee Railroad Company; Tennessee, Alabama and Georgia Railroad Company; Tennessee Central Railway Company; Tennessee, Kentucky & Northern Railroad Company; Tennessee River Navigation Company; Tennessee and North Carolina Railway Company; Tennessee Western Railroad Company; Thronsteeska Navigation Company; The Townsville Railroad Company; Tri-State Navigation Company; Tuckasegee & Southeastern Railway Company; Tuskegee Railroad Company; Union Railway Company (Memphis, Tenn.); The Union Point and White Plains Railroad Company; Virginia Blue Ridge Railway Company; Virginia Southern Railroad Company; Virginia Steamship Company; Virginia and Carolina Southern Railroad Company; The Virginian Railway Company; Waccamaw Transportation Company; Wadley Southern Railway Company; Wanchese Line; Ware Shoals Railroad; Warrenton Railroad Company; Washington-Virginia Railway Company; Washington and Choctaw Railway Company; Washington & Lincolnton Railroad Company; Washington and Old Dominion Railway; Washington and Vandemere Railroad Company; Wayeross and Southern Railroad Company; Wayeross and Western Railroad Company; Wellington & Powellsville Railroad Company; The Western Railway of Alabama; Wilmington, Brunswick & Southern Railroad Company; Winston Salem Southbound Railway Company; Wrightsville & Tennille Railroad Company; Yadkin Railroad Company; The Yazoo and Mississippi Valley Railroad Company.

[fol. 98] Certificate of Secretary of Interstate Commerce Commission—Filed January 20th, 1928

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is — true copy of notice, dated March 9, 1925, signed Joseph B. Eastman, Commissioner, in Case No. 16295, Fertilizers and Fertilizer Materials Between Southern Points, the original of which is now — file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 12th day of January, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 99] Exhibit Number 7 to Answer of Alabama Great Southern Railroad Company et al.—Filed January 20th, 1928.

Copy

Interstate Commerce Commission

No. 16295[1]

Fertilizer and Fertilizer Materials Between Southern Points

Notice

By order entered October 7, 1924, the Commission, on its own motion, instituted an investigation of the interstate rates on fertilizers, fertilizing compounds, and fertilizer materials between points in Southern Classification Territory, including rates between points in that territory on the one hand and north bank Ohio River crossings, Helena, Ark., and points in Virginia on the other. This investigation was deemed advisable because of widespread differences in the rates for substantially similar hauls, numerous departures from the long and short haul provision of the fourth section, lack of uniformity between the general levels of the interstate rates and the intrastate rates in several of the States, and the frequent complaints with reference to the rates. The purpose of the proceeding is to determine upon a basis of rates for interstate application throughout the territory involved which will be reasonable for the transportation of this particular traffic, will be free from undue

[1] For purposes of hearing, there will be consolidated with this proceeding the following dockets: No. 16295, Rates on fertilizers and fertilizer materials within the State of South Carolina; No. 16539, Rates on fertilizers and fertilizer materials within the State of Alabama; and No. 16484, Rates on fertilizers and fertilizer materials within the State of Georgia.

prejudice and preference, and will conform to the fourth section of the act. With the proceeding there have been consolidated for hearing investigations under section 13 of the act instituted upon petition of carriers and involving alleged undue preference of intrastate traffic in Alabama, South Carolina, and Georgia, and alleged undue prejudice to interstate traffic. While other intrastate rates have not been brought in issue the desirability of fixing interstate [fol. 100] rates which can fairly and appropriately be used as a basis for achieving harmony between the interstate and intrastate rates will be kept constantly in mind. With this end in view, testimony relating to intrastate adjustments will be freely admitted.

As an initial step in the investigation, the respondent carriers will be expected to present at the first hearing the basis of rates which they believe should be established, together with the evidence supporting this basis. Ample time has been allowed for the preparation of such a basis, and it is desirable that the proposal should, if possible, be made public and distributed to interested parties prior to the first of April.

Among the subjects which it appears should be developed at the hearings are these:

1. At what points are the principal fertilizer mills located?

2. Is fertilizer used generally throughout the territory, or is its use confined to particular sections?

3. What articles are known and shipped as complete fertilizers or as fertilizer materials, and should any of such articles take lower or different rates than those applicable on commercial fertilizers, and if so which articles, and what should be the relationship?

4. How long are the hauls, generally speaking, of the materials?

5. How long are the hauls, generally speaking, of commercial fertilizers?

6. What is the volume of the intrastate traffic as compared with the interstate traffic and what are the relative levels of the present interstate and intrastate rates?

7. Do the empty cars require any special cleaning after use in fertilizer traffic?

8. In the Blackshear case, 87 I. C. C. 654, a higher basis of rates was prescribed to points in Florida sought of the Jacksonville-Pensacola line than was prescribed to points on and north of that line. Should such an adjustment be favored, and why?

9. In a number of decisions the Commission has said that fertilizer is a low grade traffic, subject to no great risk in transit, and requiring no special service for its transportation. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that [fol. 101] considering both commercial and transportation conditions it is entitled to comparatively low rates, 16 I. C. C. 52, 53; 20 I. C. C. 554, 555; 26 I. C. C. 225, 353.

Consideration should be given to this phase of the matter. In other words, should fertilizer be accorded rates below what would otherwise be normal because of its value to the agricultural industry in increasing production, and its consequent value to the carriers because of the resultant increase in tonnage through its use?

10. In the Royster Case, 50 I. C. C. 34, it was stated that the average loading was about 17 tons per car, and the minimum weight was fixed at 30,000 pounds. Would it be desirable to maintain a higher minimum provided rates were fixed with this heavier loading in mind?

11. It is understood that there are many less than carload rates on fertilizer. The necessity for such commodity rates in lieu of the normal class rates, if any, and their relationship to the carload rates should be developed.

What is the volume of such less than carload shipments, and the length of the hauls, generally speaking?

12. What, if any, should be the differentials between single line and joint line rates?

13. In addition to general evidence with respect to the nature, volume and distribution of movement, an actual traffic test will be desirable covering a period when the traffic under consideration is moving freely. Suggestions

from carriers and shippers will be welcomed as to the form which this test should take.

With respect to the fourth section applications which will be set for hearing in connection with this proceeding, it will be necessary for the present to explain of record only typical instances of the relief desired under the proposed adjustment and the justification therefor.

Since the record promises to be lengthy, every effort should be made by the representatives both of the carriers and of the shippers to condense their evidence into the smallest possible compass. Explanations of exhibits which [fols. 102-106] duplicate at length what is shown on the face of the exhibit should be avoided. Discussion of past decisions of the Commission should ordinarily be reserved for brief and argument. Evidence which is merely cumulative should be avoided, and cross examination should be directed to the development of the facts and not allowed to degenerate into argument.

The first hearing will be held at Atlanta, Ga., in the Hotel Biltmore, beginning April 20, 1925, at 10 a. m., standard time. Notice respecting further hearings for the introduction of testimony by others than the respondent carriers will be issued at a later date.

Joseph B. Eastman, Commissioner.

March 9, 1925.

[fol. 107] In United States District Court

[Title omitted]

Amendment to Bill of Complaint—Filed Jan. 26, 1928

To the Honorable the Judges of the District Court of the United States for the Northern District of Alabama, Southern Division:

State of Alabama and Alabama Public Service Commission, plaintiffs in the above-styled cause, come now and amend their petition, and for cause of amendment say:

7

By adding to and at the end of paragraph 7 of the original petition the following:

While paragraph 2 of the foregoing quotation from the order of the Interstate Commerce Commission refers to all railroads operating within the State of Alabama without specifically naming them, petitioners, being advised, allege that the only purpose effected by such order was to make the short line railroads not named but here made defendants, parties to the original complaint and that said order in no wise enlarged the complaint filed in Docket 16336.

10

By adding to the end of paragraph 10 the following:

That said order of October 7, 1924, did not specifically attack or put in issue rates in the State of Alabama on what is known as short line roads.

20-a

By adding a new paragraph to be known as 20-a, as follows:

[fol. 108] Subsequent to the filing of this petition, and on the 22nd day of December, 1927, the Interstate Commerce Commission without further notice of hearing entered its order amending and extending its order of October 3, 1927, "Exhibit C" hereto, and included therein the following railroads:

Alabama and Northwestern Railroad.
Ashland Railway.
Alabama, Tennessee and Northern Railway Corporation.
Chattahoochee Valley Railway Company.
Mobile & Gulf Railroad Company.
The Tuskegee Railroad.
Alabama Central Railroad.
Alabama Central Railway.
Birmingham, Selma and Mobile Railroad.
Birmingham and Southeastern Railroad Company.
Mississippi and Alabama Railroad Company.
Sumter and Choctaw Railway Company.

Birmingham Southern Railroad Company.
Alabama, Florida & Gulf Railroad.
Atlanta & St. Andrews Bay Railway.
Gulf, Mobile & Northern Railroad Company.
Manistee & Repton Railroad.
The Muscle Shoals, Birmingham & Pensacola Railroad Company.
Tennessee, Alabama & Georgia Railway.

A copy of such order of December 22, 1927, is attached hereto, marked "Exhibit E," and made part hereof. Because of such order defendants named therein are necessary and proper parties defendants hereto and are hereby made parties defendant.

23

By adding at the end of paragraph 23 the following:

Since the filing of this complaint, and on December 22, 1927, as shown by "Exhibit E" hereto attached, these short line railroads were included in the order of October 3, 1927, and these short line railroads are threatening to file tariffs in accordance with said order.

24

By adding after the second word in paragraph 24 of the original petition the following:

other than the short line railroads named in "Exhibit E" attached hereto,

and by adding at the end of paragraph 24 the following:

The defendants made parties hereto by this amendment are threatening to file tariffs in accordance with the order of December 22, 1927, and will do so unless that order be set aside or enjoined.

26 a

By adding a new paragraph to the original petition herein to be numbered 26 a, as follows:

There are made parties defendant hereto new defendants, to wit:

[fol. 109] Alabama and Northwestern Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Mobile, in said State;

Ashland Railway Company, incorporated under the laws of Alabama, with its principal office and place of business in Ashland, in said State;

Alabama, Tennessee and Northern Railroad Corporation, incorporated under the laws of Alabama, with its principal office and place of business in Mobile, in said State;

Chattahoochee Valley Railway Company, incorporated under the laws of Alabama, with its principal office and place of business in West Point, in the State of Georgia;

The Mobile & Gulf Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Louisville, in the State of Kentucky;

The Tuskegee Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Tuskegee, in said State;

Alabama Central Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Jasper, in said State;

Alabama Central Railway, incorporated under the laws of Alabama, with its principal office and place of business in Montgomery, in said State;

Birmingham, Selma and Mobile Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Brent, in said State;

Birmingham and Southeastern Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Union Springs, in said State;

Mississippi and Alabama Railroad Company, incorporated under the laws of Mississippi, with its principal office and place of business in Leaksville, in said State;

Sumter and Choctaw Railway Company, incorporated under the laws of Alabama, with its principal office and place of business in Bellamy, in said State;

Birmingham Southern Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Birmingham, in said State;

Alabama, Florida & Gulf Railroad Company (R. D. Crawford and W. W. Beall, Receivers), incorporated under the laws of Aalbama, with its principal office and place of business in Dothan, in said State;

Atlanta & St. Andrews Bay Railway Company, incorporated under the laws of Alabama, with its principal office and place of business in Panama City, in the State of Florida;

Manistee & Repton Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Monroeville, in said State;

The Muscle Shoals, Birmingham & Pensacola Railroad Company, incorporated under the laws of Florida, with its principal office and place of business in Pensacola, in said State;

Tennessee, Alabama & Georgia Railway, incorporated under the laws of Georgia, with its principal office and place of business in Chattanooga, in the State of Tennessee.

[fol. 110] That as to all of said railroads the allegations hereinbefore made as to the testimony and other matters contained in this bill apply, except there was no petition by said short line railroads, they were not, as plaintiffs are advised and believe, included in the investigation and were, therefore, not entitled to any order whatsoever. As to such short line railroads the facts are that they are permitted under the legal intrastate rates in Alabama to charge higher rates than the railroads originally defendant hereto, and their condition was fully considered by Alabama Public Service Commission in fixing rates thereover.

27 (e-1)

By amending paragraph 27 after sub-paragraph (e) thereof by adding a new sub-paragraph to be designated as (e-1), and to read:

In finding and ordering that the intrastate scales applicable to the short line railroads named in Exhibit E hereto were involved in the investigation and in finding and adjudicating that the rates to be charged by short line railroads could be increased over the rates thereover on fertilizers and fertilizer materials established by the Alabama Public Service Commission.

27 (m)

By amending paragraph 27 at the end thereof by adding a new sub-paragraph to be called (m), and to read:

In adjudicating rates over short line railroads named in Exhibit E hereof without evidence or pleadings and without such rates being involved in any proceeding before the Interstate Commerce Commission, for which special reasons it is claimed the order of December 22, 1927, is unlawful, and all the reasons applicable to the original defendants are also urged as additional reasons why the order of the Interstate Commerce Commission of December 22, 1927, is unlawful, illegal and void.

Wherefore, petitioners, plaintiffs herein, pray that this amendment be allowed and that the railroads named in Exhibit E and named hereinbefore be made parties defend and herein and that they be served with subpœna as though originally made parties defendant; that plaintiffs, petitioners herein, have all the relief against the original defendants and these new defendants prayed in the original petition and that such relief apply both to the order of October 3, 1927, and to the order of December 22, 1927; and peti- [fol. 111] tioners pray for such other and further relief as they may be entitled to in the premises.

Charlie C. McCall, Attorney General, State of Alabama, J. Q. Smith, Asst. Attorney General, State of Alabama, Hugh L. White, Edgar Watkins, Special Solicitors and of Counsel, Attorneys for Plaintiffs.

Duly sworn to by J. H. Aldredge. Jurat omitted in printing.

[fol. 112] Exhibit E to Amendment to Bill of Complaint

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 22nd Day of December, A. D. 1927

No. 16336

In the Matter of Rates on Fertilizer and Fertilizer Materials, and Articles Taking the Same Rates, Intrastate Within the State of Alabama

First Supplemental Order

Upon further consideration of the matters and things involved in the above entitled proceeding, and of the petitions of various short and weak line carriers operating in the State of Alabama:

It is ordered, That the order entered herein on October 3, 1927, be, and the same is hereby, amended by adding to the carriers named in the third paragraph of said order the following named carriers, to wit:

Alabama and Northwestern Railroad.
Ashland Railway.
Alabama, Tennessee & Northern Railway Corporation.
Chattahoochee Valley Railway Company.
Mobile & Gulf Railroad Company.
The Tuskegee Railroad.
Alabama Central Railroad.
Alabama Central Railway.
Birmingham, Selma and Mobile Railroad.
Birmingham and Southeastern Railroad Company.
Mississippi and Alabama Railroad Company.
Sumter and Choctaw Railway Company.
Birmingham Southern Railroad Company.
Alabama, Florida & Gulf Railroad.
Atlanta & St. Andrews Bay Railway.
Gulf, Mobile & Northern Railroad Company.
Manistee & Repton Railroad.
The Muscle Shoals, Birmingham & Pensacola Railroad Company.
Tennessee, Alabama & Georgia Railway.

It is further ordered, That the effective date of said order of October 3, 1927, be, and the same is hereby, postponed to February 3, 1928, and that the rates published by the respondent carriers named in the next preceding paragraph hereof under the authority and direction of said

order of October 3, as hereby amended, shall be made effective on not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act.

[fol. 113] It is further ordered, That in all other respects the said order of October 3 shall remain in full force and effect.

By the Commission.

George B. McGinty, Secretary. (Seal.)

Amendment allowed and filed by leave of Court. Notice to be given of its allowance and filing to counsel for Defendant and Intervenors.

Given, this January 20th, 1928.

W. I. Grubb, District Judge.

[fol. 114] In United States District Court

[Title omitted]

Answer of Defendants to Petition as Amended—Filed February 6th, 1928

[fol. 115] The joint and several answer of defendants, The Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, Northern Alabama Railway Company, and Southern Railway Company to the petition in the above-styled cause, as amended by the amended petition filed herein by leave of Court under date of January 20, 1828

These defendants, for answer to said petition, as amended, adopt their answer to the original petition, which answer has already been filed and served.

For further answer to the amendments filed to said original petition, these defendants deny the allegation of the amendment to paragraph 7 which amendment undertakes to construe paragraph two of the order of the Interstate Commerce Commission entered on October 14, 1924, in Docket No. 16336, a certified copy whereof is filed as Exhibit No. 5 with defendants' answer to the original petition

herein, and they say that said order speaks for itself as to the scope of the investigation therein and thereby ordered [fol. 116] by the Interstate Commerce Commission, and they aver that said order was served, as required by its terms, upon all railroads operating within the State of Alabama, including not only the standard lines, but also the so-called short lines; all of which railroads were made parties to said proceeding by the very terms of said order duly served as aforesaid; and that all intrastate rates applicable between points in Alabama were brought under investigation and within the scope of said investigation by the very terms of said order of October 14, 1924.

For further answer to said amendment to paragraph 10 of the petition, defendants aver that a certified copy of said order of October 7, 1924, entered in Docket No. 16295, Fertilizer and Fertilizer Materials Between Southern Points, is filed as Exhibit No. 6 with the answer of these defendants to the original petition; and they deny the allegations of said amendment to said paragraph 10. They also deny that intrastate rates in the State of Alabama, on what are known as the short lines, were not specifically attacked or put in issue or were not within the scope of the investigations ordered and held by the Interstate Commerce Commission in said consolidated proceedings under its orders entered, respectively, in Docket No. 16336 and Docket No. 16295; on the contrary, said intrastate rates were in issue and under investigation in said proceedings, and they aver that said short-line railroads did appear, by counsel and by witnesses, in said consolidated proceedings and did submit evidence, both oral and documentary, concerning the matters and things falling within the scope of said investigations and consolidated proceedings, including rates applicable from, to, and between points on their lines in the State of Alabama.

[fol. 117] Answering the new paragraph added by said amended petition and designated therein as 20-a, these defendants admit the allegations thereof, except that they deny that said order of December 22, 1927, was made without further notice, and they aver that notice of the filing of said petition and application was duly served upon petitioners, or their accredited representatives. They deny that any further hearing was necessary before the entering

of said order of December 22, 1927, a copy of which is filed as Exhibit E with said amendment to said original petition here.

They aver that said short-line railroads, and all railroads operating in the State of Alabama, were made parties to the investigation ordered in Docket No. 16336, by the very terms of the order of October 14, 1924, a copy whereof is filed as Exhibit No. 5 with defendants' answer to the original petition, and that the scope of said investigation therein ordered was wide enough to include, and did include, all intrastate rates applicable on fertilizer and fertilizer materials in Alabama.

They likewise aver that said short line railroads named in said paragraph 20-a of said amendment to said petition were made parties to the order of October 7, 1924, entered in Docket No. 16295, Fertilizer and Fertilizer Materials between Southern Points, a copy of which order is filed as Exhibit No. 6 with the answer of these defendants to the original petition here, and that rates between points on the lines of said additional defendants, as well as between points on their lines and on lines of the standard railroads, were specifically brought within the scope of said general investigation.

They aver that evidence was submitted in said consolidated proceedings concerning the rates of said additional defendants applicable intrastate in Alabama, as well as for interstate application from, to, and between points on their [fol. 118] respective lines of railroad; that the proposals of the so-called short-line railroads, including the additional defendants brought in by said amended petition, were considered by the Interstate Commerce Commission in said consolidated proceedings, including particularly the intrastate rates in Alabama, and that in its said report in said consolidated proceedings, dated July 19, 1926, 113 I. C. C., 389, the Interstate Commerce Commission discussed the proposals of the short lines concerning the basis for interstate rates on fertilizer from, to, and between points on those lines, as well as the intrastate rates then in effect, the basis therefor, and the proposals as to rates for the future, and likewise dealt with the proposal of the shippers which advocated the adoption of the Alabama adjustment to govern the intrastate rates in Alabama, as well as the

interstate rates from, to, and between points on said short lines. After having reviewed the evidence submitted in regard to the rates for application from, to, and between points on said so-called short lines listed in Appendix D to said report, 113 I. C. C., 389, the Commission prescribed the basis to govern the rates applicable to the transportation of fertilizers and fertilizer materials, in carloads, from, to, and between points on said short or weak lines, and made the following definite finding in regard thereto, in its said report, 113 I. C. C., at page 425:

"We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of any of the short or weak lines described below are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above plus an arbitrary of not to exceed 50 cents per net ton, subject to the minimum carload weights found reasonable below, such arbitrary to accrue solely to the participating short or weak line or lines. The short and weak lines covered by this finding are the carriers listed in Appendix D hereto, other than those that are under common control or [fol. 119] management with some standard carrier, and also include the Columbus & Greenville, the Kinston Carolina, the Carolina Railroad, the Gulf, Mobile & Northern, the Birmingham & Northwestern, and the Atlanta, Birmingham & Atlantic, so long as they remain independent of standard-line control."

In its order accompanying said report it provided for and required the application of the rates which it had found to be reasonable for application from, to, and between points on said short lines, all of which will more fully appear from said report and order in said Docket No. 16295, a certified copy whereof is filed as Exhibit No. 1 with the answer of these defendants to the original petition here, in which report the Interstate Commerce Commission likewise made definite findings with regard to the intrastate rates in Alabama and the discrimination created by the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates therein found reasonable for the interstate transportation of fertilizers and fertilizer

materials, such lower intrastate rates having been found by the Interstate Commerce Commission to constitute the unjust discrimination against, and burden upon, interstate commerce, and the undue prejudice to persons and localities in interstate commerce forbidden and declared to be unlawful by the Interstate Commerce Act, as amended.

Subsequent to the rendition of said report and order in Docket No. 16295, the General Fertilizer Investigation, all of the standard lines in Alabama, acting through their duly accredited representatives, and the so-called short lines, acting through J. A. Streyer, their representative, petitioned the Alabama Public Service Commission to make effective intrastate in Alabama the same rates as had been prescribed by the Interstate Commerce Commission in the proceedings aforesaid and published and made effective on fertilizer and fertilizer materials throughout Southern ter- [fol. 120] ritory on the standard lines, and the higher basis prescribed and likewise published and made effective on the short lines, in obedience to the mandate of the orders aforesaid of the Interstate Commerce Commission. The said application was denied by the Alabama Public Service Commission, by its report and order dated July 18, 1927. Thereupon, by petition dated on or about September 1, 1927, the standard roads in Alabama, as well as the short-line railroads, brought to the attention of the Interstate Commerce Commission, through a petition duly filed, the fact that the Alabama Public Service Commission, by its said report and order of July 18, 1927, had declined to carry out the recommendations made in the report of the Interstate Commerce Commission in Docket No. 16295, 113 I. C. C., 389, and to make effective intrastate in Alabama the same rates as had been prescribed therein by the Interstate Commerce Commission for interstate application.

Defendants deny that any further hearing was necessary on said petition or prior to the issuance by the Interstate Commerce Commission of its order of October 3, 1927, in as much as the most elaborate hearings had already taken place in said General Investigation, Docket 16295, and in said proceedings heard therewith, known as Docket No. 16336, in which consolidated proceedings petitioners here had participated throughout and had therein urged the adoption of the

scale promulgated by said Alabama Public Service Commission and later adhered to by it, as well as the adoption of the basis prescribed by said Alabama Commission for rates of said so-called short-line railroads operating in Alabama.

The Interstate Commerce Commission, after having considered all of the evidence offered by petitioners here, as well as all other parties in interest, including the representatives of said short-line railroads, in said consolidated [fol. 121] proceedings, made and entered its report and orders aforesaid, including the orders here attacked and sought to be set aside, and fixed the basis and level of rates thereafter to be observed not only by the standard lines, but the short lines as well, for application throughout Southern territory.

Having by its said reports and orders fixed the interstate rates for application not only on the standard lines, but the higher basis to govern the rates of the short lines as well, and having made findings which condemned the Alabama intrastate rates, as well as the other findings set forth in its report in regard to those rates, and having overruled the contentions of the Alabama Public Service Commission which sought to have its basis of rates adopted for application throughout Southern territory, it was only necessary for said Interstate Commerce Commission to make its said order of October 3, 1927, as amended by its said order of December 22, 1927, which orders in turn merely required to be put into effect in Alabama, for intrastate application between points in that State, on the standard lines as well as on the so-called short lines, the respective bases and levels of rates on fertilizer and fertilizer materials which the Interstate Commerce Commission had prescribed for interstate application upon standard lines and the so-called short lines, respectively, so as to harmonize and to make the rates applicable between points in Alabama conform to the basis and level which the Interstate Commerce Commission had promulgated and prescribed for application throughout Southern territory on the two sets of lines, namely, the standard lines and the so-called short lines, respectively.

[fol. 122] Answering the amended paragraphs numbered 23 and 24, as said amendments are set forth in said peti-

tion, these defendants, on information and belief, aver that the defendants made parties to this proceeding by said amended petition are proceeding to file tariffs in accordance with the mandate and requirements of the order of the Interstate Commerce Commission dated October 3, 1927, as amended by its later order of December 22, 1927, in said Docket No. 16336, and that said short-line railroads have already published interstate rates from, to, and between points on their respective lines of railroad and/or other lines of railroad participating in interstate commerce, to comply with the report and order of the Interstate Commerce Commission in said Docket No. 16295, and upon the basis therein prescribed for said so-called short lines.

For answer to said new paragraph sought to be added to the original petition by said amendment, and numbered therein as 26-a, these defendants deny the allegations thereof, except the names of the new defendants listed on page 3 of said amended petition, which are sought to be made parties defendant thereby.

These defendants specifically deny the allegation that there was no petition filed by said short-line railroads before the Interstate Commerce Commission seeking the relief accorded them. These defendants deny that said short lines were omitted from and were not included in the investigation ordered by the Interstate Commerce Commission in said Docket No. 16336, concerning Alabama rates, and on the contrary they aver that said short-line railroads were made parties to said proceeding by the very terms of said order inaugurating the investigation in said Docket No. 16336.

They deny that said short-line railroads were not parties to said general investigation of fertilizer rates, Docket No. 16295, but, on the contrary, they aver that said short-line [fol. 123] railroads were made parties to said proceeding, and they further aver that said two dockets were heard together, along with other cases shown to have been consolidated, heard, and decided with said General Investigation by the report of the Interstate Commerce Commission, 113 I. C. C., 389; that said short-line railroads, as well as petitioners here, were heard at length, were accorded full opportunity to submit evidence, and did submit evidence, in said consolidated proceedings concerning the rates involved,

including the intrastate rates in the State of Alabama; that said parties were likewise heard on brief and in oral argument prior to the making and entering and serving by the Interstate Commerce Commission of its said report of July 19, 1926, 113 I. C. C., 389, and its subsequent supplemental reports and prior to the making, entering, and serving of its order of October 3, 1927, as amended by said order of December 22, 1927.

These defendants further aver that the Interstate Commerce Commission accorded to all parties to said consolidated proceedings, including the petitioners here, and said additional defendants sought to be brought in and made parties hereto by said amendment to said bill, at hearings in said consolidated proceedings before said Interstate Commerce Commission, full and fair opportunity to be heard upon all subject matters here drawn in question; that at said hearings a large amount of oral testimony and other evidence bearing upon said matters was submitted to the Interstate Commerce Commission for consideration on behalf of said parties, including the petitioners here; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters, and particularly to the rates of the said so-called short lines, from, to, and between points on those lines of railroad, were fully presented, argued, and submitted to the Interstate Commerce Commission for determination on behalf of said parties by their respective counsel; whereupon [fol. 124] the Commission determined all such matters and made and entered its said original report and order, 113 I. C. C., 389, and its supplemental reports and orders, copies whereof are filed as exhibits with the answer of these defendants here, as well as its said order of October 3, 1927, as amended by its said order of December 22, 1927, which reports and orders included the Commission's decision, conclusions, orders, and requirements in the premises.

These defendants further aver that said findings, conclusions, orders, and requirements, and the terms and conditions thereof, including especially its said order of October 3, 1927, as amended by said order of December 22, 1927, were and are fully supported by the evidence submitted to the Commission in said proceeding, as aforesaid; and these defendants deny each and all and every one of the

allegations to the contrary contained in said original petition, or in said amended petition.

Answering the amendment to paragraph 27, as sought to be made in said amended petition by adding a new sub-paragraph to be designated as "(e-1)," these defendants deny the allegations of said new sub-paragraph to said paragraph 27.

Defendants, further answering, deny the allegations of the amendment sought to be made to said sub-paragraph (m) of paragraph 27, and deny the allegations of said paragraph 27(m), as amended by said amended petition.

Defendants specifically deny the allegations of said amendments designated as sub-paragraph "e-1" and sub-paragraph (m), as amended, to said paragraph 27 of said petition, to the effect that said Interstate Commerce Commission, in its opinion, findings, or in its order and judgment, acted either arbitrarily or contrary to law, or contrary to the evidence, or that it made findings or reached [fol. 125] conclusions or entered orders without notice to the parties affected, or without any evidence to support the same.

Defendants specifically deny that said reports, opinions, findings, conclusions, judgments and orders made by said Interstate Commerce Commission are invalid or arbitrary, or that they exceed its power and authority in any respect or to any extent; and they specifically deny each and all of the allegations set forth in said paragraph numbered 27 of said petition, or any of the sub-divisions thereof, as amended.

Defendants reiterate the allegations of their answer to said original petition and rely upon said answer as filed to said original petition, as well as to said amended petition, and on the additional and supplemental answer hereinbefore made, as their answer to said amended petition.

Wherefore, having fully answered, defendants pray that the original petition, as amended, be dismissed at the cost

of petitioners, and for such other and further order as may be appropriate or necessary in the premises.

The Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, Northern Alabama Railway Company, Southern Railway Company, by R. E. Steiner, S. P. Smith, Charles J. Rixey, Their Solicitors.

[fol. 126] *Duly sworn to by E. R. Gardner. Jurat omitted in printing.*

[fol. 127] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF LOUISVILLE & NASHVILLE R. R. CO., ET AL., TO BILL OF COMPLAINT AS AMENDED—Filed February 7th, 1928

The joint and several answers of defendants, the Louisville & Nashville Railroad Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway Company; Central of Georgia Railway Company; Nashville, Chattanooga & St. Louis Railway; St. Louis-San Francisco Railway Company; Illinois Central Railroad Company; The Western Railway of Alabama; Atlanta, Birmingham & Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver).

Now come the above named defendants, who are common carriers by railroad, by their Solicitors, and for answer to the matters and things set forth in the petition as amended filed in the above entitled cause against them as defendants, answering jointly and severally, say:

I

These defendants, Louisville & Nashville Railroad Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway Company; Central of Georgia Railway Company; Nashville, Chattanooga & St. Louis Railway; St. Louis-San Francisco Railway Company; Illinois Central Railroad Company; The Western Railway of Alabama; At-

lanta, Birmingham & Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), jointly and severally adopt the answer filed in this cause by the Alabama Great Southern Rail-
[fol. 128] road Company; Mobile & Ohio Railroad Company; Northern Alabama Railway Company and Southern Railway Company to the petition as amended, and make said answer the answer of these defendants in every respect as if their names were signed by counsel to said answer.

Wherefore, having duly answered these defendants pray that the petition be dismissed at the cost of petitioners, and for such other and further orders as may be appropriate or necessary in the premises.

Louisville & Nashville Railroad Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Central of Georgia Railway Company, Nashville, Chattanooga & St. Louis Railway, St. Louis San Francisco Railway Company, Illinois Central Railroad Company, The Western Railway of Alabama, Atlanta, Birmingham & Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), by R. E. Steiner, W. C. Burger, Attorneys for Defendants.

Duly sworn to by R. E. Steiner. Jurat omitted in printing.

[fol. 129] In United States District Court

[Title omitted]

Order Denying Application for Interlocutory Injunction—Filed February 14th, 1928

This cause coming on to be heard before a Statutory Court, composed of Two Circuit Judges and a District Judge, upon the application of the plaintiffs for an interlocutory injunction, suspending and restraining the enforcement, operation, and execution of certain orders entered by the Interstate Commerce Commission in a proceeding known

as "Fertilizers and Fertilizer Materials between Southern Points," in so far as said orders affect intrastate rates within the State of Alabama; and enjoining the defendant carriers, until final hearing, from collecting the rates prescribed in the tariffs affecting rates on transportation wholly within said State, claimed to have been filed in conformity with said orders of the Interstate Commerce Commission and from collecting other and different rates than those prescribed for intrastate application by the Alabama Public Service Commission in the State of Alabama; and having been submitted upon the original sworn Bill of Complaint, the sworn amendment to the Bill of Complaint, together with the exhibits attached to each; the sworn answers of the defendants to the original Bill of Complaint, and to the amendment thereto, and the exhibits to such answers; also upon the record of the proceedings had and of the evidence introduced before the Interstate Commerce Commission in the consolidated proceedings in which the orders sought to be enjoined were made by it, together with the reports and orders of the said Interstate Commerce Commission, and also upon other documentary evidence; and having been fully argued, and the Court having fully considered the application and being of the opinion that the plaintiffs were accorded a full and fair hearing before the Interstate Commerce Commission upon all the issues [fol. 130] determined by the Interstate Commerce Commission in its reports and in the orders complained of herein; and the Court being of the opinion that all the findings of the Interstate Commerce Commission, contained in its said reports and orders, were within the issues presented by the pleadings, including the finding that the rates on fertilizers and fertilizer materials, fixed by the plaintiff, the Alabama Public Service Commission, by its order of May 26th, 1924, effective July 25th, 1924, between points in the State of Alabama, unjustly discriminated against interstate commerce in said traffic between points in southern territory under the interstate rates fixed by the Interstate Commerce Commission said proceedings before it as reasonable and made effective by the orders herein complained of; and the Court being of the opinion that the record of the proceedings before the Interstate Commerce Commission shows that the finding of the Interstate Commerce Com-

mission that the said rates between points in the State of Alabama fixed by the plaintiff, the Alabama Public Service Commission, as above stated, unduly and unreasonably discriminate against interstate commerce in its entirety, under the interstate rates fixed by the Interstate Commerce Commission, as aforesaid, for fertilizers and fertilizer materials between points in southern territory and operate as an undue and unreasonable preference in favor of such intrastate commerce between points within the State of Alabama as against such traffic in interstate commerce between points in southern territory under the rates as fixed by the Interstate Commerce Commission for such traffic in said proceedings before it, and constitute an unreasonable discrimination against interstate commerce, as a whole, was supported by substantial evidence; and that the finding of the Interstate Commerce Commission that one schedule of rates for such traffic, whether moving over a single line of railroad, or a number of lines jointly, was advisable, was, as shown by the record of said proceedings before the Interstate Commerce Commission, supported by substantial evidence and so was within the competency and discretion of the Interstate Commerce Commission to adopt.

It is ordered, adjudged and decreed that the application of the plaintiffs for the issuance of an interlocutory injunction, as prayed for in their Bill of Complaint, as amended, be and it is hereby denied.

[fol. 131] Given this 13th day of February, 1928.

R. W. Walker, Circuit Judge. Rufus E. Foster, Circuit Judge. W. I. Grubb, District Judge.

[fol. 132] In United States District Court

[Title omitted]

Petition for Appeal to Supreme Court and Order Thereon—Filed March 8th, 1928

The petition of the State of Alabama and the Alabama Public Service Commission, plaintiffs in the foregoing proceeding, respectfully represents that petitioners are aggrieved by the order and decree rendered herein on Febru-

ary 13, 1928, and that the petitioners for the reasons specified in the assignment of errors filed herewith desire to appeal therefrom to the Supreme Court of the United States.

Wherefore, petitioners pray that the said appeal may be allowed and made returnable to the Supreme Court of the United States according to law and that a transcript of the records, proceedings, papers and exhibits upon which said decree was rendered, duly authenticated, be sent to the Supreme Court.

This 8th day of March, 1928.

Charlie C. McCall, Attorney General, J. Q. Smith, Assistant Attorney General, Hugh White, Edgar Watkins, Attorneys for Plaintiffs.

P. O. Address: 403 Atlanta Trust Bldg., Atlanta, Ga.

[fol. 133] In United States District Court

Order Granting Appeal.

Considering the foregoing petition this day presented, it is ordered that an appeal be allowed the State of Alabama and Alabama Public Service Commission, petitioners herein and plaintiffs in the above described suit, from the order and decree of February 13, 1928, returnable to the Supreme Court of the United States; ordered that a certified transcript of the record, including the exhibits to the pleadings, except Exhibit A to the original petition herein, be filed in the Supreme Court of the United States according to law, as prayed, upon plaintiffs giving bond for costs in the sum of Five Hundred ($500.00) dollars, which bond, filed herewith, is approved.

This 8th day of March, 1928.

W. I. Grubb, United States Judge.

[fol. 134] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL AND ACCEPTANCE OF SERVICE BY RAILROADS—Filed March 8th, 1928

To the defendants:

You are hereby notified that appellant appeals from the judgment or order entered in the above styled cause on the 13th day of February, 1928, and that on the 8th day of March, 1928, the court entered an order granting such appeal from the whole of said order.

Charlie C. McCall, Attorney General, J. Q. Smith, Assistant Attorney General, Hugh White, Edgar Watkins, Attorneys for Plaintiffs.

We hereby accept service of notice of appeal, copy of praecipe for record on appeal, and copy of condensed narrative of evidence filed by complainants (appellants) for and on behalf of Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railroad Company, Alabama Great Southern Railroad Company, Atlanta, Birmingham & Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), Central of Georgia Railway Company, Louisville & Nashville Railroad Company, Mobile & Ohio Railroad Company, Nashville, Chattanooga & St. Louis Railway Company, Northern Alabama Railway Company, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company, Western Railway Company of Alabama, Alabama & Northwestern Railroad, Alabama Central Railroad, Alabama Central Railway, Alabama, Tennessee and Northern Railway Corporation, Ashland Railway, Birmingham & Southeastern Railroad Company, Birmingham, Selma [fol. 135] & Mobile Railroad, Chattahoochee Valley Railway Company, Mississippi & Alabama Railroad Company, Mobile & Gulf Railroad Company, Sumter & Choctaw Railway Company, and the Tuskegee Railroad.

This the 8th day of March, 1928.

Stokely, Scribner, Dominick & Smith, by S. P. Smith, as Attorney for Respondents Named in This Acceptance of Service.

[fol. 136] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL AND ACCEPTANCE OF SERVICE BY UNITED STATES ATTORNEY—Filed March 8th, 1928

You are hereby notified that appellant appeals from the judgment or order entered in the above styled cause on the 13th day of February, 1928, and that on the 8th day of March, 1928, the court entered an order granting such appeal from the whole of said order.

Charlie C. McCall, Attorney General, J. Q. Smith, Assistant Attorney General, Hugh White, Edgar Watkins, Attorneys for Plaintiffs.

I hereby acknowledge receipt of the within notice March 8th, 1928.

C. B. Kennamer, United States District Attorney.

[fol. 137] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 8th, 1928

Now come the State of Alabama and Alabama Public Service Commission, the plaintiffs in the above entitled cause, and file the following assignment of errors upon which they will rely upon their prosecution of their appeal in the above entitled cause from the order and decree made by a court of three judges in this Honorable Court on the 13th day of February, 1928:

1. In not concluding and decreeing that there was no adequate findings by and no substantial evidence before the Interstate Commerce Commission authorizing or justifying that Commission in regulating and prescribing intrastate rates on fertilizers and fertilizer materials within the State of Alabama and in not enjoining the orders of such Commission sought to be enjoined and annulled in this cause.

2. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that such orders were rendered by such Commission in violation of the Commerce Clause, paragraph 3, section 8 of *the* Article I of the Constitution of the United States.

3. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that such orders were rendered by such Commission in violation of paragraph 2, subparagraph a of Section 1 of the Interstate Commerce Act.

4. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein because there was no substantial evidence before the Interstate Commerce Commission that the rates on fertilizers and fertilizer materials within the State of Alabama violated Section 3 of the [fol. 138] Acts to Regulate Commerce when such rates are compared with the scale of rates fixed by the Interstate Commerce Commission in its opinion of July 19, 1926.

5. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders condemned intrastate rates in Alabama in comparison with rates fixed by the Interstate Commerce Commission in a report dated July 19, 1926, when as to such rates so fixed there had never been any hearing concerning their relationship to the rates intrastate in Alabama.

6. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein because the orders of such Commission making effective the rates found reasonable in its opinion of July 19, 1926 intrastate in Alabama were in violation of the fifth amendment to the Constitution of the United States and *to* the acts of Congress in that plaintiffs were deprived of due process of law and of a full hearing.

7. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein, which orders prescribed one class of rates applicable both to single line and joint line hauls for the reason that the issues and testimony presented to that Commission in the cause in which such orders were entered related solely to the establishment of two classes of rates, one applicable to a single carrier and

one applicable to two or more carriers joining in the same haul, such orders of the Commission being without evidence to support them and being entered in violation of the fifth amendment to the Constitution of the United States and the laws of the United States which give petitioners a full hearing and due process of law.

8. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders in effect require the fixation intrastate in Alabama of rates that are both maximum and minimum rates while permitting the carriers to regard the interstate rates as but maximum rates.

9. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that such orders were made applicable to domestic rates only; when, without a consideration of import rates, it is impossible to know whether a particular rate intrastate discriminates against any interstate rate.

10. In not enjoining the orders of the Interstate Com- [fols. 139-141] merce Commission sought to be enjoined herein for the reason that such orders are general and applicable throughout the State, when there is no evidence as to the larger number of intrastate rates in Alabama.

11. In not enjoining the orders sought to be enjoined for the reason that some of the intrastate rates superseded by such orders were higher than the interstate rates.

12. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein, because the fact that there is a difference in the level of some rates interstate and intrastate gives no power or right to the Interstate Commerce Commission to regulate all the intrastate rates by changing them to the same level as the interstate rates there being no evidence of any burden on interstate commerce as to the larger portion of the intrastate rates.

13. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein because such orders are made applicable to short line railroads

when as to such railroads there was no evidence whatsoever as to the specific earnings of each road nor as to the relationship of the transportation over such railroads to transportation over interstate roads.

14. Because the court erred in not, under the undisputed facts of this case, granting petitioners an interlocutory injunction enjoining the enforcement of the orders sought to be enjoined herein.

15. Because the court erred in admitting and considering the excerpts from the motion for rehearing of the Alabama Public Service Commission.

Wherefore, petitioners pray that said order and decree of February 13, 1928, be set aside and that they be granted relief as prayed in their original petition as amended.

Charlie C. McCall, Attorney General, J. Q. Smith, Assistant Attorney General, Hugh White, Edgar Watkins, Attorneys for Plaintiffs.

P. O. Address: 403 Atlanta Trust Bldg., Atlanta, Ga.

[fol. 142] In United States District Court

[Title omitted]

Narrative Statement of the Testimony—Filed March 31st, 1928

Before Commissioner Eastman and Examiner Archer

Atlanta, Ga., April 20, 1925.

Appearances:

Frank W. Gwathmey, 423 Munsey Bldg., Washington, D. C., for Atlantic Coast Line R. R. Co., Seaboard Air Line Ry. Co., et al.

Wm. S. McGehee, 1300 Pennsylvania Ave., Washington, D. C., for Southern Ry. System lines, et al.

W. B. Roshman, 223 Terminal Bldg., Norfolk, Va., for Norfolk Southern R. R. Co., et al.

Ray Pope, Assistant General Freight Agent, and Gus Richmond, Commerce Agent, Atlanta, Ga., for A. B. & A. Ry.

E. D. Mohr and L. L. Drescher, Louisville, Ky., for the L. & N. R. R. Co.

Alex. M. Bull, Washington, D. C., for Gulf, Mobile & No. R. R. Co. and Birmingham & Northwestern Ry. Co.

J. L. Sheppard, Memphis, Tenn., for Illinois Central R. R. Co., et al.

J. E. Monroe, 802 Q. & C. Bldg., New Orleans, for the Alabama & Vicksburg Ry.

Jas. Menzies, Freight Traffic Manager, Wilmington, N. C., for the A. C. Line R. R. Co.

N. V. Hutchinson, Winona, Miss., for the Columbus & Greenville Railway Co.

J. A. Streyer, 101 Marietta St., Atlanta, Ga., appearing for members of American Short Line R. R. Assn.

J. A. Perry and E. M. Price for Georgia Public Service Comm.

R. Hudson Burr and J. H. Tench for Florida R. R. Commission.

M. C. Moore and B. F. Martin for Mississippi R. R. Comm.

Rush H. Knox, for Attorney-General of Mississippi.

L. F. Orr for Kentucky Railroad Commission.

Harry T. Moore, Atlanta, Ga., for Atlanta Freight Bureau.

John A. O'Rourke, Atlanta, Ga., for West Palm Beach Traffic Bureau, et al.

R. L. Askea, Raleigh, N. C., for Raleigh Freight Bureau, et al.

Chas. E. Cotterill, 525 Grant Bldg., Atlanta, Ga., for the American Farm Bureau Federation, et al.

A. J. Young, Atlanta, Ga., for International Agricultural Corporation.

M. R. Beaman, Wilson, N. C., for Eastern Carolina Wholesale Dealers and Manufacturers Assn.

T. A. Bosley, Richmond, Va., for National Fertilizer Assn., et al.

[fol. 143] M. Walsh, Dothan, Ala., for Dothan Chamber of Commerce.

J. S. Davant, Memphis, Tenn., for Memphis Freight Bureau.

J. L. Roberts, New York City, for the Barrett Company.

W. H. Hendley, Spartanburg, S. C., for the Spartanburg Transportation Assn.

T. J. Burke, Charleston, S. C., for Charleston Traffic Bureau.

A. J. Whitman, New York City, for American Agricultural Chemical Co.

R. L. Rogers, Atlanta, Ga., for Swift & Co.

J. O. Cromwell, Macon, Ga., for Macon Chamber of Commerce.

F. E. Harrison, Jr., for Florida Traffic Assn.

R. G. Cobb, for Mobile Chamber of Commerce.

E. B. Gaines, for Savannah Traffic Bureau.

Oscar Sweidler, New York City, for American Cyanimid Co.

L. F. Daspit, New Orleans, La., for Louisiana Farm Bureau Federation.

Fred Juenger, New York City, for Texas Gulf Sulphur Co.

Thos. D. Guthrie, for Jacksonville Traffic Bureau.

C. W. Hayward, for Meridian, Miss.

D. A. Dashiell, Norfolk, Va., for Royster Guana Co.

Hugh M. Framton, Washington, D. C., for United States Department of Agriculture.

R. E. Quirk, Washington, D. C., for American Cyanimid Co.

Carl Giessow and Edgar Moulton for New Orleans Joint Traffic Bureau.

C. L. Neill and T. P. Goodwin, Jackson, Miss., for Mississippi Farm Bureau Fesleration.

A. G. Patterson, J. H. Alldridge and Hugh White, for Alabama Public Service Commission.

J. F. Dalton, Norfolk, Va., for Norfolk Southern R. R., et al.

Statement by Commissioner Eastman

Gentlemen, this is Docket No. 16295, an investigation on the Commission's own motion of interstate rates on fertilizer, fertilizing compounds and fertilizer materials between

points in Southern Classification Territory, including rates between points in that territory on the one hand, and the north bank of the Ohio River and Helena, Ark., and points in Virginia, on the other. There have likewise been consolidated for hearing at this investigation, Docket No. 16335, rates on fertilizers and fertilizer materials within the state of South Carolina; Docket No. 16336, rates on fertilizers and fertilizer materials within the state of Alabama; and Docket No. 16484, rates on fertilizers and fertilizer materials within the state of Georgia, these three dockets being investigations under Section 13 of the Interstate Commerce Act instituted upon petition of the carriers, and involving alleged undue preference on intrastate traffic and al- [fol. 144] leged undue prejudice to interstate traffic in the three named states. Various notices have been sent to all interested parties in regard to this investigation, indicating some of the points which the Commission felt ought to be developed in connection with this investigation. I think it unnecessary to burden the record by repeating the substance of those notices at this time (Tes. 9).

Statement by Mr. Gwathmey

Mr. Commissioner, perhaps I ought to say that it has seemed to the carriers that the most satisfactory way to present this case from their standpoint will be to have one witness, Mr. Menzies, who will deal in a broad way with the general questions that are involved in this proceeding, and he will be followed by other witnesses who will take up the situations relating particularly to certain localities and certain states. Mr. Menzies will, as I say, touch upon the general features of the case, and will further refer particularly to the States of North Carolina and Virginia; other witnesses will deal with other states in the course of the proceedings (Tes. 13-14).

Mr. James Menzies was called as a witness and, having been duly sworn, testified as follows:

My name is James Menzies; I am freight traffic manager of the Atlantic Coast Line and have been in the service of

that company about 33 years. I appear as Chairman of a committee especially appointed by southern carriers, and as such will deal in a general way with the southern situation as a whole, but my testimony will relate particularly to situations in North Carolina and Virginia.

Chairman Barham, of the Southern Freight Association, on March 23, 1925, submitted to shippers a scale of rates which, with few exceptions, class 1 railroads in Southern Territory propose to apply uniformly for single and joint line hauls. This scale is commonly known as the Royster scale. The territory embraced in the proposed adjustment [fol. 145] includes all points on and east or south of the Mississippi and Ohio Rivers, Virginia cities and points south thereof, except points on the C. & O. Ry.; points on the N. & W. Ry. from Norfolk to Cincinnati, and points on the Virginian from Norfolk to Deepwater, W. Va., said lines or routes being embraced in what is known as Trunk Line territory. Through this territory just described the carriers are proposing the application of the scale referred to (Tes. 14-15).

The territory for which I am speaking is slightly different from that defined by the Interstate Commerce Commission in its order of October 7, 1924. The C. & O., N. & W. and Virginian are in Official Classification territory and their rates are governed by Official Classification. One or more of these lines, however, may desire to testify in this case, but I have no information as to whether or not they will do so. What I may say for account of other Trunk Lines in Southern Territory may not in all respects conform to the position of the Norfolk Southern Railroad and the Florida East Coast Railway, which lines, I understand, will deal directly with their own situations.

As to what is meant by the Royster scale and how it originated: The so-called Royster scale was first established upon complaint to the Commission by the F. S. Royster Guano Co., of Norfolk, on October 8, 1913. The complaint alleged that rates on fertilizer via the Atlantic Coast Line and Seaboard Air Line from Norfolk to points in North Carolina were higher for like distances than the interstate rates from Wilmington to points in North Carolina. The complainants alleged that there was a large movement of fertilizer from Norfolk to points in North

Carolina, approximately 250,000 tons, and that the rates attacked were discriminatory against Norfolk and unreasonable per se.

(Statements were thereupon received in evidence and marked "Carriers' Exhibits Nos. 1 to 33 inclusive, Witness Menzies.") (Tes. 15-17.)

[fol. 146] I will file statement marked Exhibit No. 1, showing the rates in effect at the time of complaint from Norfolk as compared with the rates from Wilmington to points in North Carolina for approximately equal distances. The decision of the Interstate Commerce Commission rendered on July 1st, 1914, as reported in 31 I. C. C. 458-462, reduced the rates from Norfolk to points in North Carolina to approximately the level of the North Carolina intrastate scale. The rates so established from Norfolk are shown in Column B, and are known as the first Royster Scale. However, during the year 1913 a serious controversy arose between the carriers and the North Carolina authorities that had its inception in the relationship between interstate rates to the Virginia Cities and North Carolina points covering various classes of traffic. The matter of interstate rates was finally disposed of as result of conferences between representatives of the Carriers and the North Carolina Corporation Commission.

During this period, the general question of intrastate rates was the subject of bills introduced into the North Carolina Legislature with the final result that a special commission was appointed by the Governor of North Carolina to investigate the entire rate structure within the state and to make such readjustment as it might deem proper when approved by the Governor. The special commission finally ordered reductions on general class and commodity traffic, including fertilizer, and as to fertilizer the carload rates so established are indicated on my Exhibit No. 1 as Scale J. The decision of the special Commission having been approved by the Governor, the carriers filed with the state authorities formal protest against the reductions, and likewise submitted to the Interstate Commerce Commission, under date of October 10th, 1924, a formal protest against

the action on the part of the North Carolina authorities [fol. 147] because the rates, in the opinion of the carriers, were too low, and because of the effect that the reductions might have on interstate traffic. Regardless of the carriers' objection, the reduced rates were established, becoming effective October 13th, 1914. The carload rates on fertilizer thus fixed by the special commission were subject to minimum of 12 tons, with a differential of 20 cents per ton over the single line scale for joint hauls, less carload rates being made 20 per cent higher than the carload rates. (Tes. 17-19.)

Following the Legislative action in North Carolina just referred to, the F. S. Royster Guano Company filed with the Interstate Commerce Commission another complaint (reported in 38 I. C. C. 190), alleging unreasonableness in the rates from Norfolk, but complaining particularly and primarily upon the ground of undue discrimination against Norfolk on account of the newly established intrastate rates in North Carolina. This complaint was made against other lines in North Carolina as well as the Atlantic Coast Line Railroad and Seaboard Air Line Railway. The Interstate Commerce Commission in this reaffirmed the rates established in the First Royster Case, thus making no change in the then existing rates from Norfolk. The Commission, however, ordered the removal of the discrimination.

This is known as the Second Royster Case. The Commission reaffirm in this second case its findings as made in the first Royster Case, that those rates were reasonable maximum rates. When the carriers notified the North Carolina Corporation Commission of their purpose to remove the discrimination by establishing rates within North Carolina on the scale prescribed by the Interstate Commerce Commission from Norfolk to North Carolina points, the Corporation Commission petitioned for a reopening of the case, which petition was granted and rehearing was held in Norfolk in July, 1916. At this hearing the Complainant, the Royster Guano Company, moved to dismiss [fol. 148] the proceedings on the ground that the object of the complaint had been to secure rates from Norfolk on a level with the North Carolina intrastate rates, and as

there was a possibility of this result not being accomplished it was desired that the case be dismissed. This motion was concurred in by the North Carolina Corporation Commission but opposed by the carriers, and after consideration, the Interstate Commerce Commission denied the motion. The case was decided by the Interstate Commerce Commission, ordering that the rates from Norfolk to North Carolina destinations be made on a designated scale, which scale was identically the same as the new North Carolina intrastate scale, subject, however, to minimum of 15 tons per car, rates for joint hauls to be 20 cents per ton higher than for single line application.

Thus was established what is now known as the Third Royster Sale, and under which an equality of the interstate and intrastate rates was made effective. In other words, the rates established under previous decisions of the Interstate Commerce Commission in the First and Second Royster Cases were reversed and the new rates established by the special commission appointed by the Governor of North Carolina were adopted in their stead. From the minority report of Commissioner Hall in this case I quote the following:

"I concur in the majority report except as to the scale of maximum interstate rates prescribed. This is reduced from the basis twice found reasonable by us on records which are incorporated in the present record, and which in my judgment are fortified thereby. It will reduce interstate rates from Norfolk to North Carolina stations, which for several years have been maintained with our approval by three of the four defendants.

[fol. 149] "If reasonable in 1914 and 1915, when the former records were made, or in 1914 and 1916, when our former findings were announced, they can hardly have become unreasonable during the intervening period of mounting costs. The majority report attaches significance to a comparison with state-made scales in the South, and also to the declared purpose of the carriers to seek application throughout the South of whatever scale is prescribed here It attaches less significance to the genesis of those state-made scales, the rivalry between states which contributed

thereto, and the higher rates prevailing in such states as New Jersey, Pennsylvania, and Maryland, where the density of traffic in fertilizer is about as great and of all traffic vastly greater."

The Third Royster Scale, as already indicated, became effective from Norfolk to North Carolina points on October 15th, 1918, and has been in effect continuously since that time. The same scale has also been continuously in effect in North Carolina since October 13th, 1914, except that under a provision of the North Carolina Corporation Commission 10 per cent less than fertilizer rates is applicable on certain materials used in the manufacture of Fertilizer when shipped in carload lots of 25 tons or more. The Interstate Commerce Commission prescribed minimum of 15 tons per car in connection with its final decision in the Third Royster Case, and the United States Railroad Administration subsequently established a minimum of 15 tons for intrastate application in North Carolina, thereby entirely removing any inequalities in the minima governing inter and intrastate rates. (Tes. 19-22.)

When the scale ordered by the Interstate Commerce Commission in the First Royster Case was established, the carriers voluntarily revised the rates from Charleston, S. C., to North Carolina destinations on the same basis, produc- [fol. 150] ing, as a rule, reductions in those rates, but leaving them higher than the newly reduced North Carolina intrastate scale. This resulted, for the time being, in the application of the same rates, distance considered, from Charleston as from Norfolk to destinations in North Carolina. After the rates in North Carolina were reduced by the special commission appointed by the Governor of that state, Charleston complained of discrimination and appealed to the Interstate Commerce Commission for relief. This case is reported in 53 I. C. C. 506-514. Before the decision in the Charleston Case the final decision in the Third Royster Case was rendered, and the Commission ordered from Charleston to North Carolina points the same scale as had been fixed for application from Norfolk, all of which means that with the exception of certain materials used in the manufacture of fertilizer the rates from Nor-

folk and Charleston to North Carolina points and rates between points in North Carolina became uniform, both as to the scale for single line application and joint hauls, and also carload minimum weight. It will thus be seen that the scale that the carriers propose for uniform application in the South is already in effect to North Carolina destinations for interstate and intrastate application in a territory that largely exceeds any other territory in the South in the consumption of fertilizer and in the transportation thereof. (Tes. 22-23.)

The distinction between Column H in Exhibit No. 1, and Column I is: H were the published rates, and I is the scale, there are just a few differences there, and I suppose it was just simply a clerical error that there was any difference in them. It means the carriers went below the maximum in one or two cases.

I said that the Director General made the minimum the same intrastate and interstate during the period of Federal Control.

[fol. 151] "Q. According to this exhibit, that change having been made on September 5th, 1920, is the exhibit wrong in that respect?

"A. I think the exhibit is wrong in that respect." (Tes. 24.)

It would appear from the order of the Commission in the Third Royster Case that it was thoroughly familiar with the conditions in the South generally when the new rates from Norfolk were put into effect. I quote from the opinion of the Commission in the Third Royster Case as follows:

"Their witnesses (referring to the railroads) testified that the intrastate scale in the Southern States are not voluntarily maintained by them and are unreasonably low. They say that repeated and ineffectual attempts have been made to have these rates increased to what they consider a fair basis. Where interstate rates in those states have been reduced to the level of the state rates it has been because the existence of the latter rendered it impossible to maintain interstate rates on a higher basis."

It is our purpose, as stated, to make the less carload rates on fertilizer 20 per cent in excess of the carload rates. The spread thus brought about between carloads and less is very small as compared with the spread on other commodities, some of which might be mentioned as follows: The spread on cement, carloads and less, is approximately 50 per cent; likewise, on building lime and brick and many other commodities, that might be stressed.

Were it not for the desire on the part of the Southern carriers to extend unusual advantages in the handling of fertilizer traffic, the normal basis on this commodity when in carloads would have been Sixth Class, and if the less than carload rates were made 20 per cent higher than car- [fol. 152] loads the resulting figures would have been very different from what we now propose. I will file my Exhibit No. 2 showing the less carload rates as proposed by the carriers compared with rates in the different states made 120 per cent of Sixth Class. From the earliest records of the carriers, and which in some cases was before the appointment of state railroad commissions, the less carload rates on fertilizer were made but slightly higher than the carload rates, and in some cases no difference at all existed. To advance the rates on fertilizer in less carload quantities to what might be considered the normal class basis would be, in our opinion, too great an advance, and especially since we have for so many years treated fertilizer, less carloads, on the unusually low basis already outlined. (Tes. 24-26.)

I call Sixth Class the normal basis because if there were no special commodity rates on fertilizer, that is the rating it would take. I suppose it moves on class rates in small quantities between points where the movement is very slight and our tariffs do not provide for commodity rates.

No one has ever felt obliged to contest for a rating, because it was not a matter of any particular consequence. Later on in my testimony, I will touch upon the data as to the volume of movement in L. C. L. quantities; I don't think it is at all complete though.

To explain how the basis of 90 per cent of the fertilizer rates for application on fertilizer materials in North Carolina came about: Prior to February 2nd, 1909, the rates on

fertilizer and fertilizer material in North Carolina were the same. As a result of complaint made by the Continental Guano Company of Wilson, N. C., the North Carolina Corporation Commission, after hearing, ordered 10 per cent less than fertilizer rates on certain fertilizer materials, with a carload minimum weight of 60,000 pounds. Subsequently and effective February 15th, 1910, the carload minimum was reduced to 50,000 pounds. It was contended [fol. 153] by Complainants that the heavy minimum would restrict the movement to fertilizer factories. The position of carriers was that this would not be the case, and that the result would be the application of the reduced rates on a large volume of imported material moving direct to consumers. This contention on the part of carriers has been justified by experience since the reduction was made. Carriers published the reduced rating under protest and made it applicable on intrastate traffic only. Following the decision of the Interstate Commerce Commission in the Charleston Fertilizer Case (53 I. C. C. 506), the United States Railroad Administration cancelled the rating on fertilizer material in North Carolina, but after Federal Control had ended the 90 per cent basis was reestablished through error or oversight on the part of the Rate Bureau. This question was before the Interstate Commerce Commission in the Goldsboro Case in connection with the movement of interstate shipments of fertilizer material from Wilmington to North Carolina destinations, and the Commission in that case held that there was no justification for lower rates on fertilizer material than on fertilizer. In other words, the Commission in that case specifically fixed the Royster Scale for application on fertilizer materials moving from Wilmington, these being imported materials, and therefore subject to the Commission's jurisdiction.

In four instances the Interstate Commerce Commission in the various cases I have cited sustained the Third Royster Scale or rates even higher than the Third Royster Scale—the First, Second and Third Royster Cases, and in the Charleston Case. (Tes. 26-28.)

I said that the so-called Third Royster Scale is, in fact, the same as the North Carolina state scale, and that it is a scale that was adopted by the North Carolina Corpora- [fol. 154] tion Commission and made effective on October

13th, 1914, and has been continuously in effect in North Carolina since that time. I can mention other cases in which the Third Royster Scale was recently specifically approved by the Interstate Commerce Commission. In the case of the Goldsboro Chamber of Commerce vs. A. C. L. Railroad et al., 91 I. C. C. 315-328, decided July 10th, 1924, the Commission ordered reductions in the interstate rates on fertilizer and fertilizer materials from Wilmington, N. C. to destinations in North Carolina, and prescribed the Third Royster Scale as a reasonable scale for future application. The Commission further directed the use of this scale as a basis upon which Fourth Section relief was granted in that case from Wilmington to points in South Carolina and Virginia or through South Carolina to points in North Carolina. That last feature was dealt with in the Commission's supplemental Fourth Section Order in that case, in which the Commission dealt not only with the rates to points in North Carolina, but also with the rates from Wilmington to points in Virginia and points in South Carolina.

By Commissioner Eastman:

"Q. Now, isn't it true that the major issue in that case was whether certain traffic orginating at the ports was intrastate or interstate?"

"Mr. Gwathmey: My answer would be that that was not the major issue in that case, it came up in a more or less incidental way; however, Mr. Askea, who represented the Complainant in that case, and who is probably here, may take a different view of it.

"Commissioner Eastman: There wasn't any attack on the level of the rates, was there; that is, no attempt, at least no attempt to show that the rates ought to be lower than the North Carolina intrastate rates?

"Mr. Gwathmey: There was no attempt to show that [fol. 155] the rates ought to be lower than the 90 per cent scale, that is true." (Tes. 29-30.)

I will also refer to the Meridian Case, decided December 29th, 1920, (60 I. C. C. 5-51) higher rates than the Royster Scale were authorized. This case involved the rates from Meridian, Miss., to points in Alabama. In ad-

dition to the territory already covered, the Royster Scale applies in other important instances as follows: From Richmond, Va., to points in North Carolina; from Wilmington and other points in North Carolina to points in South Carolina; from points in South Carolina to points in North Carolina; from points in North Carolina to points in Virginia.

Baltimore is the heaviest shipper of fertilizer to Carolina Territory, other than Southern manufacturing points, and the rates therefrom were based on the Royster Scale south of Norfolk.

Rates from the following points are, generally speaking, higher than the Royster Scale: From Savannah, Atlanta, Elberton, and Macon to points in South Carolina; from Albany, Ga., to points in Florida; from Charleston to South Carolina points on imported fertilizer material; from Dothan and Mortgomery, Ala., to Georgia points.

Rates between points in Florida are higher and lower than the Royster Scale.

Rates from Blackshear to points in Florida, which were fixed by the Interstate Commerce Commission in the Blackshear Case, 87 I. C. C. 654, are both higher and lower than the Royster Scale.

Intrastate rates in Virginia are both higher and lower than the Royster Scale. (Tes. 30-32.)

[fol. 156] I file my Exhibit No. 3 which shows the present rates from and to representative points, compared with rates proposed by carriers. It will be observed that in nearly all cases reductions will be made under carriers' proposal. It is a fair statement from what I have said that the so-called Royster Scale is not only applied at this time intrastate in North Carolina, but into the state of North Carolina from Norfolk, for instance, and Charleston, S. C., and that rates on the level of the Royster Scale, or rates even higher than the Royster Scale, are in a very great number of instances now in effect in Southern Territory. I will deal further later with that subject.

On this Exhibit No. 3 just filed, I have undertaken to show numerous representative instances of rates that are today higher than the Royster Scale, and I have shown also some

that are lower. These rates as shown on Exhibit No. 3 are rates from important fertilizer shipping points, such as Savannah, Blackshear, Albany, Valdosta, Dothan, etc.

There are some that are lower on this exhibit. I do not intend to convey the impression from this exhibit that the rates in the South today are higher than the Royster Scale. I have undertaken to show there numerous important instances in which they are in fact higher than the Royster Scale. It is a fact that under the carriers' proposed scale reductions will be made also in the joint line rates. Carriers are proposing a mileage scale for joint haul application over trunk lines within the different states that will, as a rule, greatly reduce the existing charges.

I file an exhibit, marked No. 4, illustrating the reductions that will be made.

The reductions on interstate joint hauls will be greater than those specified for intrastate hauls, but I have prepared no exhibit covering the matter.

[fol. 157] My proposed rates are not the same for joint line and single line applications; generally the joint line scale is 34 cents higher than the single haul. I am using in this exhibit, the joint rates under the Royster Scale; I am comparing the present joint rates with the proposed joint rates. (Tes. 32-34.)

The present rate from a point on one line to a point on another line, the total distance of which is 100 miles, is $3.16 per ton in Georgia; while the carriers' proposal for that distance is $2.82 per ton. These are intrastate rates with which I am making comparison in the Exhibit No. 4. I stated that if I used the interstate rates the showing would be stronger from my standpoint than if I used the intrastate rates, because the interstate rates would show relatively higher rates than at present are in effect. But these are the intrastate rates in these various states.

I haven't any definite figures from all points, but from what I have secured I think the joint haul movement will be approximately 25 per cent of the total; I mean by that, the joint hauls as between Class I roads.

I am not including hauls to points on short line railroads; I think that term will include all connections. In other words, my impression is that as a whole the Trunk Lines

will deliver at their own stations about 75 per cent of the total traffic they carry, and about 25 per cent will go to their connections. There is a heavy joint haul movement as between the Class 1 railroads. The joint haul movements over the Class 1 railroads will vary greatly, according to point of shipment; take, for instance, from Norfolk, each of the Carolina lines, each of the principal Carolina lines reach Norfolk with their own rails; therefore, one line would not haul the traffic of the other; in the case of Wilmington, some of these lines do not reach that point, and therefore there would be a larger joint haul movement [fol. 158] from Wilmington than from Norfolk. At Charleston, the case is very nearly identical to Norfolk, the three principal lines there, the Southern Railway, the Seaboard Air Line and the Atlantic Coast Line, all reach Charleston with their own rails, and necessarily one does not carry the tonnage destined to local stations on the other. When you get down to Florida—well, we might as well describe Savannah before getting down to Florida—at Savannah, I am of the impression that the joint haul movement there would be larger than in North Carolina, because a number of the lines don't go to Savannah, I am talking about the Class 1 railroads. (Tes. 34-36.)

So far as the short line railroads in Georgia are concerned, there are a great many more than in other states, and our deliveries to the short line connections I think would be greater than they would be elsewhere. As to Florida, there is no interchange between the Seaboard and the Atlantic Coast Line in that state. The great bulk of the fertilizer that is produced in Florida is at points common to the Atlantic Coast Line and the Seaboard Air Line, and as in the case of Norfolk, each line handles its own traffic; that is the case, for instance, at Jacksonville, at Gainesville, at Tampa and other like points where fertilizer may be manufactured or mixed.

When I gave the estimate of 25 per cent, as I did a moment ago, I included all deliveries to all connections.

There is a substantial movement over the Class 1 Railroads alone. (Tes. 36-37.)

Commenting briefly upon the Blackshear decision in the relation to the previous Royster Cases: Blackshear, Ga., is a local station on the Atlantic Coast Line Railroad located

between Jesup and Waycross, Ga., 85 miles from Jacksonville. Many years ago, in order to enable the Blackshear fertilizer plant to compete with the plants at Jacksonville, [fol. 159] we established rates on fertilizer from Blackshear to Florida destinations made small differentials over Jacksonville. This adjustment was apparently satisfactory until on February 9th, 1922, the Blackshear Manufacturing Company filed complaint with the Interstate Commerce Commission alleging that the rates on fertilizer from Blackshear to Florida points were unreasonable and unduly prejudicial as compared with the rates from Jacksonville to the same points of destination. As the result of this complaint, the Commission fixed two mileage scales from Blackshear to destinations in Florida, one of which covered territory in Florida and north of the Seaboard Air Line and Louisville & Nashville from Jacksonville to Pensacola. The other scale, which was from 10 to 25 cents per ton higher, applied to points south of the line just described. Under this decision the rates from Blackshear to points in Florida for some distances were higher than the rates from Jacksonville for the same distance and in other cases lower, and an effort was made to remove these inequalities between the rates from Blackshear and the rates from Jacksonville to points in Florida, but thus far no definite results have been obtained. It is assumed that the differences now existing will be disposed of during the present investigation.

I file my Exhibit No. 5, which shows rates in effect prior to the revision under the Blackshear Decision (87 I. C. C. 654-667); the rates made applicable under that decision and the rates which the carriers now propose. A few illustrative points only are shown, but to each of the points named, the Blackshear Manufacturing Company made carload shipments during the year 1924.

In its report in the Blackshear Case, the Interstate Commerce Commission in referring to its previous decisions the so-called Royster Cases referred to what were termed "the very narrow issues" which those cases presented. For the purpose of showing the very great importance of the issues [fol. 160] in the Royster Cases as compared with those involved in the Blackshear Case, I desire to call attention

to the difference in the volume of tonnage affected by the Royster Case on the one hand as compared with the Blackshear Decision on the other. (Tes. 37-39.)

I file my Exhibit No. 6, which shows the movement of fertilizer, carloads and less, from Blackshear, Ga., to all destinations for the year 1924. It will be observed that the movement from Blackshear is limited in volume. There were 7,455 tons, of which 407 tons were less carloads, to destinations in Georgia, which were not involved in the Blackshear complaint. There were 1,423 tons, of which 253 tons were less carloads, to destinations in Florida on and north of the Jacksonville-Pensacola line, and 7,772 tons, of which 766 tons were less carloads, to stations in Florida south of that line. It will be noted, therefore, that the movement from Blackshear to Florida points is insignificant when compared with the large tonnage of more than a million tons per annum moving under the Royster Scale, or under the North Carolina Scale, which is the same as the Royster Scale. In other words, more than 100 times as much fertilizer moves under the Royster Scale than from Blackshear to Florida points. The movement under the Royster scale is, in fact, approximately three times the total consumption of fertilizer in Florida and one and one-half times the total consumption in Georgia.

My view on the subject is that if the issues in the Royster Case were narrow, as stated by the Interstate Commerce Commission in its report, certainly it is not correct to assume that a very large and important volume of tonnage and very important issues from that statement were involved in the Royster Case, and much more important than any that were involved in the Blackshear Case.

[fol. 161] I will file my Exhibit No. 7, showing the consumption of fertilizer in the Southern States from 1912 to 1923 inclusive, as taken from the American Fertilizer Handbooks.

As will be noted therefrom, North Carolina is by far the largest consumer. During the year 1923 that state consumed in excess of 23 per cent of the fertilizer used in all the Southern States.

In 1923 the total consumption of fertilizer in the Southern States, as given by the American Fertilizer Handbook

was 4,220,807 tons while North Carolina consumed 1,081,811 tons, or 23 per cent of the total. I am unable to give the tonnage handled by all of the North Carolina lines, but during the year 1923 the Atlantic Coast Line handled into, or out of, or between points in North Carolina 583,630 tons, representing 46 per cent of the total fertilizer tonnage handled by the A. C. L. during that year. (Tes. 39-41.)

Concerning why the consumption of fertilizer in Georgia has decreased about 50 per cent between 1914 and 1923, whereas the consumption in North Carolina increased about 25 per cent: The boll weevil I presume was the principal cause for the decrease in consumption in Georgia, and the boll weevil did not reach North Carolina until recently; I don't know what effect it will have on the consumption of fertilizer. I should say that would be the reason for the decrease in South Carolina also.

I have just shown that 46 per cent of the total fertilizer tonnage handled by the Atlantic Coast Line Railroad in 1923 moved into, out of or between points in North Carolina; all of this tonnage moved under the so-called Royster Scale of rates.

"Q. And the same is true of the tonnage in North Carolina handled by other railroads in that state, is it not?

"A. I presume the conditions are very nearly similar as to the other lines.

[fol. 162] "Q. I mean as to the tonnage which moved under the Royster Scale of rates?

"A. I think that is true." (Tes. 41-42.)

I can't give you a definite statement as to what percentage of our total tonnage would move under the Royster Scale, but I am reasonably sure that it would run between 50 and 60 per cent.

As to whether or not the conditions which I have outlined as to the Atlantic Coast Line are fairly representative of the conditions of the Southern Railway and Seaboard Air Line in the Carolinas: The Southern Railway and the Seaboard Air Line Railway compete with the Atlantic Coast Line Railroad in the transportation of fertilizer from all of the larger plants in the Carolinas and Vir-

ginia, and in fact throughout the Southeast generally, and it follows that what may be true of one of the lines in respect to the matters referred to is within reasonable bounds true of others. I will file as my Exhibit No. 8 a statement showing on what articles the carriers' proposed rates are intended to apply.

I have no particular comments to make on that statement, at this time. I understand the application of rates on various articles will be dealt with by other witnesses in respect to particular situations.

As to how the fertilizer tonnage handled by the Southern carriers compares with the tonnage handled in other territories: For the calendar year 1923 the class 1 railroads in the United States handled 11,179,575 tons of fertilizer, which were divided as between the sections of the country as follows:

Southern District 5,543,408, or 49.6% of total tons handled.

Eastern District 4,485,964, or 40.1% of total tons handled.

Western District 1,150,203, or 10.3% of total tons handled.

[fol. 163] During the same year there was handled by the Class 1 railroads of the United States 2,260,015,332 tons, divided as between the districts as follows:

Southern District 366,819,725, or 16.2% of total.
Eastern District 1,255,909,101, " 55.6% " "
Western District 637,286,506, " 28.2% " "

It will be observed that while Southern Carriers handled nearly 50 per cent of all the fertilizer transported in the United States during the year 1923 they handled only 16 per cent and a fraction of all carload traffic in the United States, including fertilizer. (Tes. 42-44.)

"Q. What part of the total tonnage of the railroads in the Southern, Eastern and Western Districts of the United States is represented by fertilizer tonnage?

"A. In the Southern District, fertilizer represents 1/66th part. In the Eastern District, fertilizer represents 1/280th part. In the Western District, fertilizer represents 1.554th part."

One seventeenth of the total tonnage of the Atlantic Coast Line Railroad is represented by fertilizer.

I will file as Exhibit No. 9 a statement showing the location of fertilizer factories throughout the South, together with information as to the capacity and character of these factories. Going back to that percentage of tonnage, I stated 1/17th, on the Atlantic Coast Line Railroad; that is 1/17th of the total number of tons carried. The number of ton miles would not necessarily be the same per cent.

As a rule, the tonnage of fertilizer handled in intrastate movement is much greater than is the movement between the states. This is due to the fact that fertilizer factories are spread throughout the entire South. In fact, most of the larger manufacturers have plants in various states, and [fol. 164] naturally their shipments of fertilizer are made from the factory nearest to the point of consumption. This has a two fold advantage to the manufacturer, because it reduces the charges of transportation and at the same time tends to expedite delivery.

This is further illustrated by the fact that, while the Atlantic Coast Line Railroad has a total mileage of 4,865 miles and has continuous rails in various directions for approximately a thousand miles, its average haul on fertilizer and fertilizer material is little, if any, in excess of 100 miles.

Generally speaking, the relative levels of existing interstate rates are higher than the intrastate rates, although sometimes they are the same. (Tes. 44-46.)

I have a statement before me showing, for instance, that the Virginia-Carolina Chemical Company have factories at 29 points in the North and South, but most of them are located in the South. The Royster Guano Company have thirteen factories. The Armour Fertilizer Works 22. The International Agricultural Corporation 17; and the American Agricultural Corporation 32.

"Q. One of the questions suggested by the Commission in its notice for consideration in this case was the following: Should fertilizer be accorded lower rates than would otherwise be considered reasonable because the use of fertilizer results in increased production which, in turn, benefits the carriers? What have you to say about that subject?

"A. When the State Railroad Commissions were first created they found in effect very low rates on fertilizer.

The carriers even in that somewhat remote period were aware that fertilizer would stimulate production and that the use of it was especially necessary in semi-barren lands of the South that would otherwise be practically unproductive. The railroads encouraged the farmer in the direction of intensive cultivation of the soil, knowing, of course, that the successful farmer would, in the end, mean the suc- [fol. 165] cessful railroad. The struggling little carriers then existing in the Southeast were, generally speaking, in the hands of Receivers, or about to enter or emerge therefrom. They, however, experimentally, carried stable manure or other procurable fertilizer without profit to themselves, and sometimes without cost to the user. I mention these facts to indicate that the railroads in the earlier days had the interest of the country they served at heart, as they have today, and must always have if they themselves are successful. These things the railroads learned long before the latter day politicians told them about it. The use of fertilizer, however, has long passed beyond the experimental stage, and its economic advantages are thoroughly known and established. Fertilizer is essentially a saver of labor in that by its use a given quantity can be produced on less acreage than would otherwise be possible. The farmer not only saves the labor cost which would be necessary to cultivate additional acreage, but he saves investment in land that would otherwise be necessary.

Thirty years ago, for instance, it would require from two to four acres, and sometimes more, to produce a bale of cotton in Southwest Georgia, while a bale an acre is now frequently grown, this result being obtained by intensive cultivation and the use of fertilizer. The use of fertilizer today is reduced to a business basis, and there is no more necessity for further reducing the rates on that commodity than there is to transport without cost, or at less than a reasonable profit, all articles used on a farm, such as plows, harvesters, cultivators, harrows, hoes, rakes, and scores of other necessary things, all of which greatly stimulate the production of crops, and, in fact, without which practically no crops at all could be produced." (Tes. 46-48.) [fol. 166] The railroads from a very early period recognized themselves the desirability of establishing as low rates as they felt they could possibly maintain on fertilizer,

in consideration of these other things that I have just mentioned, and they have not only recognized the necessity for it, but they established the rates.

I said I have been connected with the Atlantic Coast Line Railroad Company for some thirty years. I am very familiar with this fertilizer situation.

It is a fact that although the railroads initially established very low rates on fertilizer materials, various State Commissions have forced upon the carriers from time to time further reductions, which the carriers have endeavored strenuously to oppose. Repeated attempts have been made by the carriers in the Southeast for many years to secure a fair and reasonable adjustment of fertilizer rates but without avail. In various cases throughout a long period of years the carriers have suffered under these drastic reductions on this commodity. But recently, the Georgia Commission issued an order requiring a reduction of about 12 per cent in the fertilizer rates in that State, notwithstanding the fact that the rates were already very low, and the order in our opinion entirely disregarded the evidence. The carriers in this case asked the Interstate Commerce Commission to review the rates established by the State Commission, but on account of the proximity of the shipping season and the inability of the Interstate Commerce Commission to prevent the great loss that would otherwise take place, they applied to the District Court for the Northern District of Georgia for an injunction against the application of the reduced rates. Following the granting of the injunction the Georgia Railroad Commission cancelled its circular. No explanation or opinion was rendered as to why these radical changes were brought about. (Tes. 48-49.)

[fol. 167] That is very true of Florida, but it was probably before you [Mr. Burr] became connected with the Railroad Commission. I remember the time when we handled manure for nothing in order to induce the farmers to use it. We gave rebates to get freight too, but that is more than 3 years ago. I think the only important reduction made in Florida within 30 years was on fertilizer material, and the Florida Commission ordered on these commodities 75% of the fertilizer rates—and that was extremely objectionable to the carriers. I would not be able to answer without looking it up as to whether, except for the advances

made by G. O. 28 and Ex Parte 74, the mixed fertilizer rates in Florida are not a great deal lower than the rates the carriers voluntarily established before the Commission was created—leaving the materials out. (Tes. 50-51.)

It is a matter of common knowledge I believe that the prices of fertilizer last year were very unstable, and that the 8-3-3 brands, which are largely used for cotton, sold at prices ranging from $24.00 per ton down to $17.50 per ton. I am advised that because of the keen competition between the fertilizer manufacturers the manufactured goods frequently sold at prices below the actual cost of the materials going to make up the completed fertilizer. The cash price of 8-3-3 goods this year is approximately $25.00 per ton, with very little if any variation in price therefrom. A much larger proportion of the fertilizer sold this year was on a cash basis than in previous seasons. The prices on fertilizer vary according to formula, but prices of all the different grades are higher this year than last. I don't know what has become of the competition that put it down last year; I presume the shippers will explain that. It is my information that the prices last year for the same class of fertilizer varied as much as $6.00 per ton. Assuming that the average haul on fertilizer was 100 miles the freight rate under the carriers' proposed scale for that distance would be $2.59 per ton, so that the maximum variation in price of fertilizer last year amounted, approximately, to 2½ [fol. 168] times as much as the total freight cost. Concerning how the price of fertilizer is fixed and maintained: At a hearing before the So. Carolina Commission on January 7, 1925, Mr. Dashiell, of the Royster Guano Co., testified: "As far as the price of our company is concerned, the F. O. B. port price is taken to determine the price at an intermediate point, the freight from the port being added." My understanding is that the interior manufacturies deliver fertilizer at the various sections of the country served by them at the same figure for the same class of goods that is quoted by the price making port. I have made no study as to how the price of fertilizer is maintained by independent fertilizer companies, but apparently there was no uniform price fixed by any of the fertilizer companies during the 1924 season. Doubtless the manufacturers will be willing to frankly discuss these questions while giving their testimony. (Tes. 51-53.)

I file my Exhibit 10, showing the acres of improved farm lands in each Southern State for 1920, the value of farm crops, total consumption of fertilizer, consumption of fertilizer per acre, cost of fertilizer per acre, and the freight charges on fertilizer used on one acre, using carriers' proposed scale for the average haul of 100 miles. This statement shows that during 1923 the average consumption of fertilizer per acre in No. Carolina was 264 pound. It further shows the cost of fertilizer per acre to be $3.10 and the value of farm crops per acre at $50.71. The transportation hauls on fertilizer vary greatly. From the ports the haul is generally longer than from interior manufacturies. At this time, I am unable to state exactly what the average haul for Southern lines as a whole is, but in my opinion a fair average is 100 miles. That is why I used 100 miles for the average haul. Some manufacturers claim it is less than 100 miles. In one of the South Carolina cases manufacturers testified that the average was 85 miles for single line hauls and 102 miles for joint line hauls. I have had a statement prepared showing the movement of fertilizer and fertilizer material from Wilmington, N. C., which [fol. 169] I file as Exhibit 11, and from which it will be noted that the average haul of the A. C. L. on fertilizer is 89 miles and on fertilizer material 111 miles. Combining both fertilizer and fertilizer material, the average haul is 97 miles from Wilmington. Having thus determined that the average haul is approximately 100 miles, the carriers propose for that distance the rate of $2.59 per ton. At the rate the carriers are now proposing on 264 pounds of fertilizer—which I said was the average amount used per acre in North Carolina—the freight cost for the average haul of 100 miles would be 34 cents, and on that basis the freight cost of the fertilizer used on 100 acres would amount to $34.00. If the freight rate were reduced say 10%, and even assuming that the farmer received any benefit therefrom, the maximum benefit that could be obtained on the 100 acre farm would be $3.40. However, you will understand that the average number of pounds of fertilizer used on all improved lands might not convey a correct impression of the amount of fertilizer used on the farm products which most require the use of fertilizer. For instance, some of the improved lands may not have been fertilized at all.

More fertilizer is consumed in the production of cotton than any other crop in Southern territory, and from information secured from the No. Carolina Agricultural Department the average number of pounds of fertilizer used in the production of cotton in North Carolina during 1924 was 450 pounds per acre, the freight cost on which at the rate proposed by the carriers for a haul of 100 miles would be 58¢. On that basis the freight cost on fertilized consumed on a 100-acre farm would be $58. A 10% reduction would result in a saving to somebody of $5.80. I most assuredly do not think any part of this, or any other reduction that might be made in the rates on fertilizer, would be passed on to the farmer. (Tes. 53-56.)

Fertilizer is, as stated, a low grade commodity when viewed from the standpoint of rates at which it moves. In value, it is higher than many commodities which pay the carriers much more revenue per car, and in the transportation of which there is no greater risk; in fact I might say [fol. 170] considerably less risk. Nitrate of soda, for instance, is classed "inflammable" by the Bureau of Explosives, and all cars containing even one bag has to be tagged on both ends and both sides of the cars, and bills of lading have to show this information. I have never known of a carload to burn up from that inflammable material. I have never heard of one, but nevertheless that work is required of the carriers. I never heard of a case where a car had ever been set afire by nitrate of soda, but I believe that these rules are in effect by order of the Inter-State Commerce Commission. Besides the solid cars of nitrate of soda, fertilizer factories ship small lots of nitrate of soda in about 25% of the cars. I file Exhibits 12 to 18, inclusive, showing the average revenue earnings per car derived from the transportation of coal, cement, scrap iron, asphaltum, black strap molasses and building stone, from which it will be noted that the revenue per car on these commodities far exceeds the revenue per car on fertilizer. It will be noticed for instance that the revenue derived from tranpsorting a carload of coal from Birmingham to Opelika, Ala., a distance of 128 miles, is $86.70, while on fertilizer the revenue per car under the proposed scale would amount to $56.70. The price of fuel coal delivered in carload quantities at representative points in the Southeast and in the

Carolinas is approximately $3.75 per ton, not including the revenue of the purchasing carrier. We move coal in open top cars and fertilizer in box cars. During the fertilizer season, there is not a greater percentage of return loading on the fertilizer than on the coal; we have to return the cars empty to the fertilizer plants, because the fertilizer has to move rapidly, and if it doesn't move at the proper time, it can't be used on the soil. The highest grade of bituminous coal is delivered for domestic use in small quantities at prices not exceeding $10 per ton. Fertilizer, on the other hand, according to grade, will cost prices ranging from $25 to $40 per ton. Cement sells at $2.90 per barrel, or approximately $14.50 per ton. The revenue de- [fol. 171] rived on a carload of cement for 100 miles is $72.63, while on fertilizer it amounts to $54.39. The revenue on a carload of scrap iron, under the rates established by the No. Carolina Commission, at average loading of 36 tones, will yield the carriers $82.80, as compared with $54.39 on fertilizer. Prices on scrap iron vary according to grade. During 1924 the A. C. L. sold 58,000 tons at an average price of $14 a ton. (Tes. 56-59.)

While it may be argued that the carriers carry much greater tonnage of the other commodities named than of fertilizer, it should be borne in mind that one of the principal conditions affecting the cost of transportation is the light or heavy loading of the equipment. In fact the heavy loading of equipment is one of the principal means through which the railroads are striving to reduce the cost of transportation. The carriers can never fully accomplish the result desired as to heavy loading on fertilizer because that commodity will not now, and never can, load much, if any, in excess of one half the tonnage capacity of the modern car. The present carload minimum of 15 tons is not based upon transportation conditions, but is merely for the benefit of the small farmer who does not buy fertilizer in larger quantities. Of the gross weight of a car loaded with fertilizer to the average thus far obtainable, viz., 21 tons, the dead weight is approximately 50% of the total. Of commodities which load the modern car to capacity, the dead weight is approximately one third of the total weight. While it has been persistently claimed by representatives of manufacturers that the fertilizer requires no special

service for its transportation, this is very far from being correct. Quick movement of fertilizer is a necessity when the shipping season begins, and no two seasons are alike. For weeks prior to the time when it may be expected that the rush movement will begin, the entire operating department is instructed to direct the movement of empty equipment towards the fertilizer producing sections, and every available car that can be had is so forwarded—whether such car be a home or a foreign car. (Tes. 59-60.)

[fol. 172] In times of car shortage it is necessary to supply cars for the fertilizer movement even at the expense of shippers of other classes of dead freight. A lumber mill, for instance, operates throughout the year. A fertilizer manufacturer, on the other hand, operates only a part of the year, but because fertilizer must be moved when offered, cars must be supplied and the traffic given preference,, even though lumber be delayed. Embargoes issued against dead freight do not include fertilizer, which is classified in such cases with perishables. Where we have to place embargoes to let perishable fruits and vegetables go through, we let the fertilizer go through also. During the fertilizer season the whole department is keyed up to the situation, and the work of Superintendents, Trainmasters, Yardmen, and Conductors is closely scrutinized by managing officers from day to day. Special trains are frequently operated during the heaviest parts of the season, both in bringing in empty cars and taking out loads. The fertilizer season is one of the most strenuous periods in the life of the Southeastern carriers, and the fact that fertilizer is handled so well, and generally without complaint, is partially due to the splendid cooperation which the superintendents of the fertilizer plants extended to the carriers. These superintendents will not claim that special transportation service is not rendered by the carriers in the movement of fertilizer. Next to perishable crops, fertilizer is the most expensive traffic that the carriers handle, requiring as it does the utmost diligence.

During the heavy movements of fertilizer from Charleston, for instance, there are employed in the switching of empty cars to the fertilizer factories and the removal therefrom of loaded cars 7 extra engines and crews. The cost of these extra switching crews, yardmasters and clerks will

approximate $14,200 per month. The regular crews, operating 10 engines at that point, assist as far as possible in the handling of the fertilizer traffic. Outside, however, of the regular crews, the cost per car in switching fertilizer during the heavy months would approximate $4. Further- [fol. 173] more, the A. C. L. has 12 miles of yard tracks used exclusively in the handling of the fertilizer business at Charleston, the bulk of such tonnage moving, as it does, during the months of January, February, March and April. These tracks were constructed for the handling of the fertilizer traffic and would not otherwise be needed. The most of this traffic moves during January, February, March and April, but as between these months the peak movement varies. For instance, in 1921 the peak movement of 2921 cars from Charleston was in March, while in 1923 the peak movement of 3762 cars was in February. While January and April generally show the smallest movement, it frequently happens that April shows the second largest number of cars shipped. In April, 1923, there were shipped 671 cars while in April, 1924, there were 1,381 shipped. In April, 1920, 2,749 cars were shipped as compared with 1,052 cars in April, 1921. 1968 cars moved in January, 1920, while in January, 1921, there were but 400. In January, 1924, we handled out of Charleston 1674 cars while in January, 1925, only 568 were handled. These statements are made for the purpose of showing that while the movement cannot be anticipated, the railroads must be prepared at all times to handle the peak movement . Talking about the Southeastern carriers principally, fertilizer is the most expensive freight traffic that the carriers handled with the exception of perishable freight. Unless the conditions are entirely different, I am prepared to adhere to that statement in other cases which will come up involving other commodities. But it is a very expensive traffic to handle, for the reasons which I have stated. I should say it is more expensive than cotton; of course the risk there doesn't apply. There is a good deal of switching in connection with the handling of cotton at compress points, storage, etc. (Tes. 59-63.)

In my testimony just given with reference to the movement from Charleston, I referred particularly to the A. C. L. I presume the conditions on the Southern and the Seaboard are substantially similar to those on our road in

[fol. 174] that respect, but those lines will probably talk for themselves on that point. The traffic I refer to is that which moves from Charleston by the A. C. L. and the conditions on the Southern and the Seaboard are similar to our own. The average detention of equipment used in the fertilizer traffic at Charleston is not less than 14 days. At the beginning of the season, in January, the A. C. L. commences the parking of equipment for the movement of fertilizer, and this parking is continued until from 400 to 600 cars are in the yards awaiting loads. Outside of the delay incident to the parking of cars, when cars are placed for loading until released at destination, the detention is approximately as follows: placed at factory on first day of the month, loaded on the second, moved to classification yard on second, forwarded on third, arrived at destination in So. Carolina on fifth, released on seventh, moved on eighth and returned to Charleston on tenth. The per diem charge for box cars used in the fertilizer business is $1 per day; I couldn't definitely say how many miles per day that averages per car, but of course it varies. The business will move, for instance, from Charleston into So. Carolina as far as Florence, on a special train, and there be distributed to the various branch trains, and it would be very difficult, I should think, to get at a fair average of what the delay would amount to. While the average may be 100 miles for the entire movement of fertilizer in the South, the haul from the ports is as a rule greater than the haul from the interior manufacturing plants. Based on this detention I have shown, and the per diem charge of $1 per day, the total per diem cost in connection with a carload of fertilizer from Charleston to So. Carolina points would be $14. We find that about 40% of the equipment used for fertilizer is foreign; of course that is all according to the necessities for our own equipment at home, sometimes we have to carry the cars, foreign cars for our own equipment, from points as far as Montgomery, Ala., to Charleston, in order to meet the situation, and very often we run special trains from Georgia to Charleston, when there is a shortage. This [fol. 175] last year we have been able to and have furnished a larger part of our own equipment than we have in previous seasons. (Tes. 63-66.)

I have prepared a statement showing the mileage rates on fertilizer, carloads, as fixed by the State Commissions for application intrastate between stations on the A. C. L. in the states through which it operates and will file it as Exhibit 19. This shows the local rates authorized by the various State Commissions for use on the A. C. L. in the states of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama; also the average of these rates as compared with the carriers' proposed scale. The rates as they exist today are shown in all cases except as to So. Carolina and Alabama. In these states are shown the rates in effect prior to the reductions made last year, and which rates are the subject of complaint to the Commission in this proceeding. It will be noted that for a distance of 50 miles the rate proposed by the carriers is $1.80 per ton while the average of the state scales is $1.92 per ton. For 75 miles the rates proposed by the carriers is $2.14 as compared with the average of the state scales of $2.20. For 100 miles the rates proposed by the carriers is $2.59 as For 150 miles the rate proposed by the carriers is $2.93 as compared with the average rate of the state scales of $2.41. compared with the average of the state scales of $2.95. (Tes. 67-68.)

We asked the Interstate Commerce Commission to intervene in the South Carolina case; we are not complaining about the rates shown in this exhibit that are specified in So. Carolina. So far as the rates in this exhibit are concerned, they are higher in South Carolina than those which we are proposing in some cases. Generally speaking, the rates I have shown as applicable on the A. C. L. are also applicable over other southern carriers serving the same territory. The principal exception is as to Virginia, where the rates authorized for use by the Southern Railway are somewhat lower than those authorized for use on the A. C. [fol. 176] L. and the Seaboard. I understood the question to apply specifically to the rates in those states through which the Atlantic Coast Line passes.

The rates in Eastern territory are invariably higher than the Royster scale. I file as Exhibit 20 a statement showing the rates in effect on fertilizer from Baltimore by various Trunk Lines to points in Maryland, Pennsylvania and

West Virginia as compared with the Royster scale. This exhibit shows for instance that the scale the Southern carriers are proposing ranges from 65 to 75% of the rates that are now in effect from Baltimore by the Pennsylvania R. R., the B. & O. and the Western Maryland. For 15 miles, the Pa. R. R. charges $1.80 per ton while Southern carriers are asking for $1.24 per ton; for 51 miles the Pennsylvania charges $2.50 per ton and the Southern carriers are asking $1.92; for 124 miles the Pennsylvania charges $3.70 per ton while the Southern carriers are asking $2.70. The B. & O. earns $2.40 per ton for 33 miles—the Southern carriers are asking $1.58; for 131 miles the Western Maryland charges $4.10 per ton—the Southern carriers are suggesting $2.82. As will be noted, in no single instance is the rate on these Northern Trunk Lines as low as the Southern carriers are proposing. I have a similar exhibit showing the rates from Philadelphia to stations on the Pa. R. R. for distances ranging from 7 to 299 miles, which I will file as Exhibit 21. (Tes. 69-71.)

For the first haul of 7 miles the Pa. charges $1.80 per ton while the Southern carriers are proposing for that distance $1.02 per ton. The Southern proposal is 56.6% of the rate charged by the Pa. R. R. For 72 miles the Pa. charges $3.20 per ton—the Southern carriers are suggesting $2.14 per ton, or 67% of what is harged by the Pa. I have prepared another exhibit, covering the C. & O. and the N. & W.; we haven't got the R. F. & P. but we could furnish it if necessary; I think there is very little movement of fertilizer on the R. F. & P. I have made several statements of rates showing those now in use by the Northern lines [fol. 177] compared with the Royster scale which I will file as my exhibits 22, 23 and 24. They are of the same general character as those previously described and show: Rates from Syracuse, N. Y., to stations on the N. Y. Central. Rates from Hagerstown, Md., to stations on the B. & O. Rates from St. Bernard, Ohio, to points in West Virginia. (Tes. 71-72.)

I will also file as my exhibits Nos. 25, 26 and 27, statements showing the rates on fertilizer between points on the N. Y. P. & N. R. R.; rates from Lynchburg Va., to N. & W. stations in Virginia and West Virginia, and rates be-

tween C. & O. stations in Virginia compared with the Royster Scale. These exhibits show that, while in some instances the rates of the N. Y. P. & N., N. & W., and C. & O. are the same as, or lower than, the Royster scale, on the average, the rates are materially higher than that scale. I could probably furnish a good many comparisons of the same nature if necessary with the eastern rates. Those comparisons shown cover rates in the territory as to which there is a large and substantial movement and consumption of fertilizer.

I will file exhibit No. 28, showing rates on fertilizer, carloads, in effect between points in C. F. A. territory, which were fixed by the Commission in I. & S. Docket 965, (34 I. C. C. 254-302) as compared with the Royster scale. The rates charged in the territory named, as will be observed from statement, are much higher than the Royster scale, the latter ranging from 56 to 88 per cent of the former. The rates in C. F. A. territory briefly compared with the Royster scale are:

	C. F. A.	Proposed by Southern carriers
5 miles	160	90
50 miles	260	180
75 miles	280	214
100 miles	300	259
150 miles	360	293
300 miles	460	405

According to the American Fertilizer Handbook for 1924, the states of New York, Pennsylvania, Maryland, Ohio and Indiana consumed during the year 1923, 1,403,710 tons of fertilizer.

[fol. 178] I will file as Exhibit 29 a statement showing a number of the principal points in Indiana, Maryland, New York, Ohio and Pennsylvania in which fertilizer factories are located. The Interstate Commerce Commission has frequently expressed the view that the Southern Railroads are entitled to higher rates than in Eastern Trunk Line and C. F. A. territories. I will file as an exhibit a statement, No. 30, which contains extracts from various decisions, one of which I quote as follows:

"The Commission has frequently commented upon the more favorable traffic conditions obtaining north of the Ohio River than in the territory south of the river, resulting from greater traffic density and more favorable operating conditions north of the river, as a reason for the higher plane of the rates south of the river."

I do not have in mind any cases where on particular traffic the Commission has held the reverse. Of course, there are some rates that are lower in the South than in the North; in fact, these rates on fertilizer that we are now talking about, but I don't remember that a decision ever sustained that position, that the rates should be lower. There are a number of commodities that take lower rates in the South than in the North. (Tes. 72-75.)

From what I have been saying it is evident that so far as the fertilizer is concerned the rates in the South are actually lower than they are in the East and in C. F. A. territory. This indicates to my mind that the fertilizer rates in the South are low, and proves the contention of the carriers during the past 25 years or more than the intrastate rates have been unreasonably low. The carriers themselves are strongly of this view, but they have been powerless to prevent the reductions that have continuously been made in these rates and this is especially true of Georgia, Alabama and recently of South Carolina. Fractions omitted, the population per square mile, according to the 1920 census, of the several Southern states, as compared with the bordering Northern states, was as follows: Virginia, 57; No. Carolina, 52; So. Carolina, 55; Georgia, 49; Alabama, 46; Florida, 18; Mississippi, 39; Louisiana, 40; Tennessee, 56; Kentucky, 60; Maryland, 146; Pennsylvania, 194; New York, 218, and Ohio, 141. (Tes. 75-77.)

[fol. 179] From the given figures, the density of the fertilizer traffic in the South is greater than it is in the North or in the West. Generally speaking I should think that would influence the rates, but we are not asking as high rates on fertilizer as are now applicable on these Trunk Lines and C. F. A. Lines, for the reasons I mentioned, and which have prevailed from the beginning, that is in our own minds, we have thought that fertilizer ought to go at

low rates, and we have always made them low, that is the reason they are so much lower than the Northern rates. Possibly it would have been a fairer and more proper comparison in stating the population per square mile in the several Southern states as compared with some of those more northerly to give the number of inhabitants per mile of railroad; I am perfectly willing to make that a part of this record; we are just seeking for the truth in this case and we are trying to present our side of it with that in mind.

I will file my Exhibit 31, showing a comparison of the Royster scale with rates in Texas, Arkansas, Oklahoma, Louisiana, west of the Mississippi River, and Missouri, from which it will be observed that the carriers' proposal is much lower than the average of the rates charged in all of the state named. Those are the intrastate rates. In Texas and Missouri the rates are in some cases slightly lower and in other cases slightly higher. Rates in the other states named are much higher than the Royster scale for all distances.

I will file exhibit 32 in substantiation of statements I have just made. This statement also shows that the carriers' proposed scale is, with slight exception, lower than the average of all the rates in the Southern states and the rates in bordering states. On this exhibit I have included all the Southern states—Tennessee, Kentucky, Mississippi and the whole of it. It appears here that the rates shown in Mississippi are the same as I show for Louisiana east of the river, and the latter are the Y. & M. V. rates; it also appears that there are certain Northern states where the rates are lower in some cases than we are proposing—such as Illinois—not in all cases. (Tes. 77-79.)

[fol. 180] I have compiled figures showing the relative consumption of fertilizer and rates applicable thereon in the Southern States and all of the adjoining states in Eastern, Western and Southwestern Territories, which I file as exhibit 33. This statement shows the consumption of fertilizer in the states named for the year 1923, together with rates applicable in said states by carriers named therein, also the average weighted rate based on the application of the state rates applied to the total tonnage consumed. The

weighted rate is shown in comparison with the rate which the carriers propose for general use in Southern Territory. This statement shows that the average weighted rate in all of the states named for 70 miles would be $2.17 per ton compared with $2.14 as proposed by the carriers; for 110 miles $2.55 as compared with $2.59 as proposed; and for 150 miles $3 as compared with $2.93 as proposed. In other words, this statement undertakes to show the weighted average rate on all fertilizer consumed in all the states named based on the movement being entirely intrastate and at rates applicable within each state. (Tes. 79-80.)

I have used here the total fertilizer consumption for each state and have for the purposes of the exhibit assumed that all of that tonnage moved under intrastate rates. As a matter of fact a very considerable tonnage moves under the interstate rates. In assuming the entire movement under the intrastate rates we are giving ourselves unquestionably the worst end of the showing, because the interstate rates would all be higher than the intrastate.

I suppose that Exhibit 33 is based on the rates as shown in Exhibit 32. I used the rates shown in the scale on Exhibit 32 to compile 33, so far as 32 shows it at all. I am not familiar with the various intrastate scales of Kentucky. I have not selected the C. N. O. & T. P. as the only one I have any knowledge of; we might have selected the L. & N. or the Southern or any other line; we just simply took one line. I am not aware that that is just about the [fol. 181] highest fertilizer scale in the state of Kentucky. (Tes. 80-82.)

Cross-examination:

It is our purpose that the charges on fertilizer and materials throughout the South be unified and governed by a mileage scale. We suggest the Royster scale in connection with the minimum. It is our position that the charges should be on a mileage basis. Of course, I would say that if it is found necessary or advisable for some carrier in the Mississippi Valey for instance to suggest lower rates than we have suggested for the Southeast, that that would result in bringing down the rates below the Royster scale in the Southeast, and in the Carolinas, we would strenuously object to it.

"Q. Then, that is important to pursuing this inquiry. You will recall that in other pending proceedings the carriers have stressed the absence of any distinguishing circumstances which would warrant a different rate level in any part of the South. Well, now, do we understand that there is any change in the point of view which you have in regard to that?

"A. I do not say there is any change, but should there be any change, that would be our position, and the position of the carriers handling the great bulk of the fertilizer traffic."

We think there should be uniformity in the rate level throughout the South. We are not proposing rates for Trunk Line Territory now. We are suggesting in this case, so far as the lines I represent here are concerned, that the Royster scale be applied in Florida and to and from Florida. That is intended as a recognition of the propriety of the same rate level in Florida on fertilizer as throughout the remainder of the South. (Tes. 83-86.)

In one of my exhibits I have submitted a list of articles concerning which it is the conclusion of the carriers that such exhibit embraces all articles which properly should be charged to so-called fertilizer rates; incidentally I would say that in this list there are really commodities which will never move within Southern Territory. Carriers now con- [fol. 182] cur in the point of view that cottonseed meal is a proper article upon which the fertilizer rate shall apply. There is no suggestion that this is merely a temporary idea and that later we have in view taking cottonseed meal out of the fertilizer list. I do not recall the circumstances that you refer to that this is different from the position the carriers formerly took.

"Q. But you do recall that in practically every one of the State cases involving fertilizer, the carriers have sought to exclude cottonseed meal from the operation of the fertilizer rates, and before the Interstate Commerce Commission?

"A. Well, that was a straightforward proposition on the part of the carriers. You indicate that we might have in mind the suggestion of the fertilizer rates on cottonseed meal here, and that later we might change our minds about it?

"Q. Yes.

"A. I want to disabuse your mind on that fact."

Today, I don't know just what percentage of cottonseed meal is used for feed and what for fertilizer, but my understanding is that the great bulk of it is used as a fertilizer. (Tes. 86-88.)

I think it is a fair statement to say that the proportionate uses of cottonseed meal for fertilizer material purposes will vary from season to season, depending somewhat upon the costs of the ammonias which can be gotten from other sources of material. I am not familiar as to whether at this particular season there is a high-percentage of meal being used for fertilizer than has been the case for sometime in the past. My understanding is that cottonseed hulls are used as fertilizer material. That list, shown on Exhibit 8, is drawn from the Classification. Waste hairs and waste wools are not in this list. If hair is an important matter to you we are quite willing to include it.

The carriers agree to the idea that particularly the same charges should be applicable on the materials and the mixed goods. I think it is generosity on our part to include nitrate as fertilizer material. I want to remark incidentally [fol. 183] that what is done in the Southwest, or Northwest, or the East, would not necessarily govern the Southern Territory; in other words, we are not fixing this whole question for the entire country.

"Q. No. In some parts of the territory, notably in the Carolinas, there are now these lower charges on certain materials than on the finished goods. For instance, the Royster scale, as I understand it, does not apply to a rather considerable array of materials, and your thought is that in the making of a new rate system, the separate charges on those materials should be put on the uniform fertilizer rate, as we may hereafter call it.

"A. And the Royster scale, as applied on the materials you speak of, less 10 per cent, when cars are loaded with 50,000 pounds or more." (Tes. 88-91.)

I don't think it would be advisable to impose a higher minimum on some of the materials than would otherwise be applicable merely by reason of a classification minimum.

In fact we have had a great many complaints from people who could not ship the minimum as today in the rate. We would like to get the minimum here of 40,000 pounds, but the present minimum, or Royster minimum, is 15 tons, or 30,000 pounds. The minimum loading of the cars is in excess of 20 tons now. We have always been fearful that the small farmer would be inconvenienced in the shipments if we established even 20 tons as the minimum. Our average today is 21 tons, talking of the Atlantic Coast Line. But, of course there was a great many shipments that are made on 15 tons, and in talking to small farmers they object to more minimum than to the rate. They do not think that the rate means anything to them, but they do think that the minimum is very vital. The reason is that the small farmer can only ship say 10 or 15 tons at a time, and it would be embarrassing to him and expensive to him to increase his load to 21. The average load of 21 I mentioned is the average of fertilizer and fertilizer materials, including everything.

In connection with the rates we are proposing as mini- [fol. 184] mum the Royster scale, which carries a minimum of 15 tons. The present minima, and a lot of these fertilizer materials, is as high as 40,000 pounds—20 tons. We feel, as we have gotten the minimum heretofore, that there would be no reason for the shipper, why that should not be gotten hereafter, and regardless of the minimum, we will urge our fertilizer friends, including the factories and the farmers, to load as much above the minimum as possible. In Exhibit 8, if necessary, all the various minimum weights are to be disregarded. Of course we would like to have these minima on the fertilizer materials if we can get it, but if there is opposition to fixing these minima we will have to go along on the 15-ton minimum. Our proposal is the Royster scale, or 15 tons. We would like to see the minimum advanced, provided it would satisfy the people who use the fertilizer. Unquestionably from a transportation point of view it would be an economical thing to do. Of course there is this to say, and we recognize the fact that these fertilizer factories want as high a minimum as possible. They want to sell as much fertilizer at one time as they can, but we have other people to satisfy as well as these people who are the principal complainants in this case. We have

got the farmers to satisfy and I do not know myself whether the farmers will be satisfied with even a 20-ton minimum. I think it would be extremely objectionable to them, to even advance the 15 tons. You take our case in South Carolina, for instance, the old scale—the old South Carolina scale, which is shown in one of my exhibits, was higher than the Royster scale, but the minimum was 10 tons in South Carolina, and 15 tons up to the Royster scale. When we undertook to make the reductions in the rates in South Carolina with the increased minimum, it created a terrible disturbance, in fact the South Carolina Commission first accepted the Royster scale, and later they determined that on account of the increased minimum they would have to retire from the position they originally took. And I refer you to these cases. Now, as questions in which we are probably more vitally interested than is the fertilizer factory. (Tes. 91-95.)

[fol. 185] We would like to load our cars to 20 tons minimum, but I doubt very much if we could put into effect as a minimum, without considerable trouble on the part of our customers, and I am not including in that sense the manufacturers, for they are our customers too. We would like to have a minimum higher than 15 tons on these materials which are customarily loaded considerably in excess of 15 tons. There can be no real reason for not prescribing a higher minimum than 15 tons on that range of articles where it can be done. If it is where it can be done, you have got to fix it one way or the other, you know. If you make a minimum of 20 tons, you have got to stand by that. Sometimes the fertilizer materials move to the farmer and he mixes his own fertilizer.

There are some of these materials which are imported, such as the nitrates and potashes. It is our suggestion that the domestic rate from the nearest port shall be applicable to the interior movement of those imported articles. As to movements of those imported materials from ports other than the nearest port, the carriers have decided on port equalization, the distance considered; using the domestic rate from the nearest port as the base. In some proper measure our scheme contemplates at least a partial port equalization from the farther distant ports to a given destination, and generally speaking where the port equalization

is necessary of course it is very much less than the Royster scale. By equalization is meant that it makes a less charge than the scale itself would provide. That would be applied to all imported fertilizer materials. The equalization plan that we are suggesting would apply to any imported fertilizer materials. If there are 2 ports 100 miles from a particular destination in the territory of course they take the same rate. Generally speaking we have done this, which I think will illustrate the principle. On imported fertilizer material, we consider that traffic as moving from Europe, or whatever the point of origin may be, and that it is entitled to consideration, on that account, and we would make, for instance, from Jacksonville to Atlanta the same [fol. 186] rates as from Brunswick and Savannah or Charleston. Now, we would not necessarily apply to intermediate points. When we get a shorter distant point, the rates from one port would be higher than from another. Take intermediate points, for instance, between Jacksonville and Atlanta, and between Charleston and Atlanta, that situation would differ to accord with the destination. Jacksonville to Waycross, for instance, which is an intermediate point between Jacksonville and Atlanta, would be higher from Charleston than it is from Jacksonville. The distance from Jacksonville to Waycross being 75 miles, and from Charleston about 210 miles. Yet, when you get to another distant point, you have to decide on a uniformity of adjustment. Taking Augusta, Ga., as an illustrative destination point: I would not suggest that the charge from Jacksonville would be the same as, say, from Charleston. It would be something higher than from Charleston, and mayhap less than the normal rate scale. I don't know that it could be set down in a rule by which the determination of how much less could be governed, absolutely applicable in all cases, but we are quite willing, and we are prepared to furnish you the information as to what rates we propose. (Tes. 95-100.)

Before we undertook to make this check, I personally was under the impression that we could lay down a rule like that, and that we would not have to go into the detailed checking every individual rate in the South, and I found that so far as I had tested it, that no uniform rule could be applied. Now, if you have a uniform rule that would

enable us to solve a problem of that kind, I have no doubt that we, the railroad, would be greatly appreciative. I thought myself that we could do that, and I suppose I was merely theoretical, as probably you are, in arriving at the conclusion. All fertilizer materials move on the average a greater distance than the manufactured fertilizer. I am inclined to think that the imported materials would move longer distances than the domestic, but I have made no calculations on it. 100 miles would not necessarily be the average on that. We gave the thought that there should [fol. 187] be an attempt at partial equalization between two groups of ports to a given destination some consideration, but my understanding in the final check was that distance controls. I am stating my information on those things. I may be wrong about that. I think that distance was the predominating feature.

It will be convenient for me to make available the figures that I have worked out as to this equalization of ports on these imported materials. It is not the thought of the carriers that the new charges on imported material should be made shipside rates. You might call them gross rates, it seems to me. We will apply that as our transportation charge, and to that figure will be added the terminal charges. (Tes. 100-102.)

I am sorry to have to hesitate about so important a matter as the approximate gross freight revenue of my railroad, the A. C. L. You are probably more familiar with it than we are. The freight earnings for 1924 were $57,287,726.00. When I computed the proportion which the tons of fertilizer transported by your road bore to the tons of all freight, I did not at the same time compute the percentage which our fertilizer revenue bore to our total freight revenue. I think I can give you the approximate relation of the fertilizer revenue to the total; the fertilizer tonnage in 1924 was 6% and a fraction of our total tonnage. That is the same as 1-17th. The proportion that the fertilizer revenue bears to the freight revenue is 4.7. The approximate gross from fertilizer revenue of our line is about 2¾ million dollars a year.

Concerning fertilizer being the most expensive traffic we handled outside of perishables, I enumerated items connected with the installation of extra switching service at

Charleston, as illustrative, and the special service from Charleston. The handling of fertilizer from Charleston is substantially a seasonal matter, mostly all at one season, and somewhat in the fall as well. I was just telling out that there was an out-of-pocket cost of approximately $4 on account of our having to furnish 7 extra engines and crews for the handling of the fertilizer business. If we could [fol. 188] handle this fertilizer traffic year after year, we would not require these extra facilities, extra switch engines at all, but we would not have to move it in a given time. Nobody knows, even your fertilizer people don't know when fertilizer is going to move.

Wherever we have to put on extra service, it means extra cost. I said we have had to put on 7 extra switching engines to handle this fertilizer business during the short period that fertilizer moves. If we had throughout the year the same average movement every month which moves for the months of January, February, March and April, we would have those 7 locomotives employed every month, and the cost would be the same. As to the situation at Charleston being typical of all places where fertilizer is manufactured: It is a question as to how much is moved. From some of the ports of course we don't move much fertilizer in the East, and we can handle that traffic without any extra expense at these ports, but Charleston is typical, I should say, of several of our ports. Wilmington, I should say, is very close to Charleston in that matter. Savannah, I should also say the same thing. The conditions at Jacksonville are pretty nearly the same as they are at Charleston; I went down there last week to inquire into that feature especially. What is regarded as extra service is not found by us in anything like the same degree at interior points as at the ports, because we do not handle the fertilizer tonnage in any such large quantities as we do from the ports.

As to some other conspicuous item in the nature of an extra expense connected with the handling of fertilizer in addition to what I have shown in my evidence: I mentioned, for instance, the additional 12 miles of tracks. Side tracks; you might call them main lines in one sense, that we have provided to take care of this fertilizer business out of Charleston, and we have a main-line track, you might call

it, the Ashley River extension that runs parallel to our double track into Charleston, and the fertilizer factories built spur tracks from the Ashley River extension of ours. They built their own tracks from there, and the distance from—the length of these side tracks to the fertilizer fac- [fol. 189] tories will range, I suppose, from 2 to 500 yards; I am not very sure about the maximum. Whether it is called a side track or something else, it is simply a parallel track running in front of a long row of fertilizer plants. (Tes. 102-108.)

Then leading off from that are the little spurs right into the plants themselves. It is my understanding that those particular spurs are maintained by the fertilizer factories. We do the switching of the cars into and from those spurs. The equipment used is always box cars; we cannot use flat cars for fertilizer. In that respect fertilizer differs not at all from other classes of traffic, other than such as moves in open car equipment. Leaky roofs might be all right for some classes of traffic, in fact, for most of the heavy traffic, but it will not do for fertilizer; we have got to see that these cars are absolutely perfect. Cement cannot be put in cars with leaky roofs, but there are many commodities that the question of leaky roofs does not interfere with the movement. There is no order to that effect, but it is the practice that an outbound loaded car of fertilizer be returned empty to the place from which it first moved. Now, there is no return movement in the direction of Charleston for the empty car, and if we get the car back at all we have got to take it back empty, as a rule. We get that particular car back empty. We run special trains for the return of these empty cars into Charleston.

"Q. Now, is not that same thing peculiar to Charleston? It would not be true, for instance, as to Montgomery, Charlotte, of [or] Columbia, South Carolina?

"A. Well, to the extent that Montgomery is sufficiently large, it would be the same thing; we would have to move fertilizer from one point, regardless of what point you named. Now, in the same fashion that I am describing as to Charleston." (Tes. 108-110.)

Speakingof fertilizer materials, I could not answer if there has been more than one reduction in fertilizer rates

[fol. 190] since the creation of the Florida R. R. Commission, but the witness who will testify for Florida will, of course, have all of that information with him. I think generally, though, Mr. Burr is correct. The Florida Commission has been especially fair in the matter of fertilizer rate adjustments, and on fertilizer materials it is just the reverse. In anticipation of the effective date of the R. R. Commission law of 1897, I could not answer as to whether it is a fact that the Florida carriers raised all rates in the State. The first Florida Commission was established before 1897, however, then abolished and re-established. As I recall it, the reason given to us for the establishment of the fertilizer material rates in Florida was to equalize the interior manufacturers with the port cities.

"Q. Well, it was a substantial reason, wasn't it, the port city had the advantage?

"A. I don't think so, Mr. Burr. The reduction on fertilizer materials in Florida was made many years ago, and the little business that is now manufactured—I mean the few tons of fertilizer that are manufactured in the interior of Florida is so insignificant that it has not had the effect desired, if that was the effect that you did desire." (Tes. 111-112.)

I think I can give you figures to show what it is. We have the traffic shipped from these interior points in Florida,—so small it is not included in our list. Tampa and Jacksonville are, I would say offhand, would ship 95% of the total fertilizer business in that State, as compared to these other smaller factories. Going back to the only reduction made in fertilizer rates in Florida for a quarter of a century—the rates the carriers made when the Commission was established—the Commission adopted our tariff to start with. I should say that our rates for 10 miles, for instance, were somewhere about $1.10 to $1.25 per ton, and the only reduction made in them was to bring them to about a dollar, and that reduction for the short haul just gradually faded out in a little while, and the rates for the longer dis- [fol. 191] tances are about the same as they were when you made them.

"Q. They are now—I mean the base rates, without the plusses?

"A. Yes, I think that is more true of the State of Florida than any other State in the South." (Tes. 112-113.)

To be entirely frank when I made my general statement this morning indicting the State Commissions of the South with having taken radical steps with reference to the reduction of fertilizer rates, I did not have Florida in mind when I made the statement.

I am more familiar with the Southeast than I am with the Mississippi Valley and Florida territory from the Ohio River. That particular territory will be covered by some one else and I could not go into the detail of it. I never heard of the Kentucky Commission writing a decision on fertilizer rates. I never heard of the Tennessee Commission writing one—and yet they might have done so without my knowledge. To my own knowledge I never heard of it. You surprise me when you make the statement that they never treated fertilizer rates.

Exhibit 7 is a statement showing the consumption of fertilizer from the Southern States for the years 1913 to 1923, inclusive. I believe some of the figures for 1924 were available, but it was not the case as to all of them.

"Q. My reason for asking that question, Mr. Menzies, I notice considerable fluctuation in the quantities consumed in several of the States during the years from 1918 on down. Some of the States whose consumption had been greatly reduced were making a come-back, and I think it will be found that the figures for 1924 will be much better—reflect a much larger consumption than the 1923 figures do.

"A. That is for Mississippi?

"Q. That would include Mississippi, and there were other States I am informed, who also have increased their consumption very materially. Do these figures include the tonnage of cottonseed meal and hulls, Mr. Menzies?

"A. On fertilizer, we got these figures from the hand [fol. 192] book, and we assumed that they are correct, but I do not know whether that includes everything or not—whether it includes cottonseed meal or not." (Tes. 113-116.)

I don't know if they only reflect the tonnage of the compounded fertilizers consumed. I took them from the fertilizer people, who are here to testify, and I suppose we will get the facts about these matters when they get on the stand.

I show the total consumption for 1923 in the Southern States as 4,220,807 tons and under the total for the United States, 6,647,308 tons. You add those two together to get the aggregate for the entire country.

"Q. Now, Mr. Menzies, your Exhibit No. 33 is a statement showing the weighted average of rates on fertilizer, carloads, applicable intrastate in Southern and border States, based upon the consumption of fertilizer in those States during 1923, compared with carriers' proposed scale. Now, in making up these figures, do you use only the scale used in the exhibit 32 on Mississippi?

"A. I just wanted to compare them and see—well, where these rates are used at all, they are the same."

We just used this one scale of rates shown on Exhibit 32 in making up this weighted average—we used the State scales. Some States have different scales; we use one of them. We disregarded all specific rates in making up these figures. We think that if this statement is unfair at all it is against the carriers. We have taken the total consumption of fertilizer in each of the States for average distances, and multiplied the tonnage by the rate within each State, and then when we get the total tonnage in all these States, we divide that by the grand total tonnage of fertilizer, and you find in that way the average rate—the weighted rate. If the statement does not show cottonseed meal it does not reflect what the weighted rate on cottonseed meal is of course.

"Q. And if the rate that you have used here for 300 miles, of $2.93, and the rate for another road in a State for [fol. 193] the distance is $4.00 per ton, why the Statement is of little value to the Commission, is it not?

"A. Well, I will let the Commission determine that question." (Tes. 116-118.)

I stated that the movement from interior factories in Florida was so insignificant that I had not even prepared

figures for the movement. With reference to what quarrel we have with Florida in view of that: We don't want to establish the precedent. So far as Florida is concerned we may be quarreling about something merely on paper; then, if 75c is the proper basis for fertilizer rates in Florida, it would be argued it is the proper basis for fertilizer material rates in all the other States.

The last column on Exhibit 10 shows the freight charges on fertilizer used on one acre, based on the Royster scale—not dealing only with commercial fertilizer that has been manufactured at the fertilizer plant, not the fertilizer material. On the manufactured fertilizer every single commodity that goes into that has experienced a haul before it comes into the plant, except that which is delivered direct from the fertilizer plant to the interior by wagon, or otherwise, and there is a great deal of that done. All the phosphate and other materials that have to be imported or moved into Atlanta from other sections of the United States necessarily have to pay freight charges into Atlanta. Fertilizer material as a rule load heavier than commercial fertilizer.

"Q. I am not speaking about the weight of the load, I am talking about the distance only. The hauls actually on those raw products, than it is on the manufactured article, as I understood from your testimony this morning?

"A. I do not think there is any question about that. The movement of commercial fertilizer from Atlanta to farmers 85 miles in circumference, would not be nearly as great as the movement of phosphate rock from Florida to Tennessee, naturally." (Tes. 118-120).

[fol. 194] Phosphate rock does not move at fertilizer rates. I want to show what the farmer has to pay. The manufacturer in Atlanta gets his raw products in from Savannah, and from Florida or from Tennessee, and other points, and shipping to Griffin, Ga., has to deliver at Griffin, Ga., as I understand it, at the same price that Savannah delivers to Griffin, Ga. He has to absorb whatever is necessary in order to deliver a fertilizer at Griffin at the same price that Savannah can sell it. That is my understanding, but all the farmers do not live at Griffin.

By Com. Eastman:

"Q. Mr. Menzies, if I may interrupt here, the point, as I understand it, this exhibit simply shows the rates on the finished fertilizer, and Mr. Martin makes the point that they are lower rates on fertilizer materials, going to the plants where the fertilizer is made, and that those rates enter into the cost of the product. Now, I gathered from your answer that the rate is based on the particular rate, and so far as the ports are concerned, there would not be that movement of fertilizer materials into the plants, would there?

"A. That is exactly correct. The interior manufacturer has to meet the conditions that he finds, and it is the same there, as I understand, in Mississippi, as it is in Georgia, or anywhere else in the interior." (Tes. 120-122.)

As to whether I mean to imply by this exhibit that the freight cost on fertilizer for fertilizing an acre of land in Mississippi for 1923 was only 6 cents: That is what the report shows, and I give the authorities. That is for all farm crops in Mississippi. They might use much more than that on cotton. I have really stated that on cotton in So. Carolina and probably in No. Carolina, that their average would be 450 pounds, but I am merely quoting these Government statements here, to indicate what the condition is in the different States. I should not be surprised if these averages are made up by taking the total number of acres of open farm land in Mississippi and dividing that by the [fol. 195] total number of tons of fertilizer consumed. Of course on many of those acres they don't use any fertilizer at all. They are not used to fertilizer in Mississippi, apparently, anyway. I don't know whether Exhibit 10 includes cottonseed meal or hulls or not; you will have to confer with the fertilizer people about that, because I just copied their statement, as to the consumption of fertilizer. They may have included cottonseed meal and they may not. (Tes. 122-124.)

As to what sort of mileage we are going to use by applying a mileage scale of rates: We are going to use workable routes; that does not necessarily mean short lines all the time. We are not willing to be governed by the mileages adopted in the final decision of 13494.

On Exhibit 8, page 3, I show an item, soil compounds, containing one or more ingredients. We are willing to include nitrates in that item. If it is stated here, we intended to include it. It would be my opinion that we should include under soil compounds on page 3 a compound which would contain nitrogen and phosphate or some mixture of that sort, potash and maybe all three. It is the intention and purpose of the carriers to apply the new rate to cottonseed meal and others. (Tes. 124-126.)

(Witness excused.)

[fol. 196] Mr. E. R. Gardner was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

I am connected with the Southern Railway System lines as Commerce Agent. I have had about 15 years traffic experience with the Southern Lines. I have made special investigations in respect to the fertilizer rates in Southern Territory.

In my testimony I deal with certain general features, and then particularly with the situation in and into Carolina Territory. To be specific, with the rates—intrastate rates in South Carolina, the rates to and from South Carolina, and the rates on fertilizer and fertilizer materials from Ohio River Crossings to Carolina, and I will also deal with the situation with regard to the Southern Railway in Virginia, and also with the rates from Charleston, South Carolina, to Georgia points.

I have also certain testimony and rate comparisons going to the question of the level of the rates for application generally in this territory.

Statements were thereupon received in evidence and marked "Respondents' Exhibits Nos. 34 to 134, inclusive, Witness Gardner." (Tes. 127-129.)

My first Exhibit, No. 34, is an exact copy of a portion of the Manufacturers' Record for December, 1924, which gives a survey of the origin and development of the fertilizer industry in the South, as contributed by Mr. Whittle, secre-

tary of the Soil Improvement Committee, of the Soil Improvement Association, at Atlanta. That exhibit, as I stated is a history of the fertilizer industry in the Southern Territory.

[fol. 197] In connection with that particular exhibit I wish to call attention to the first page, which is page 202 of the Manufacturers' Record, the second paragraph of that page, which I will read:

"But the tonnage of 1923 was of higher plant food content than for the year 1920, or for any previous year. So the fertilizer industry has more than recovered lost ground in the consumption of plant food units. In fact, 1923 marked the banner year in fertilizer history for actual plant food sold in the Southern States."

What I mean by that is that in prior years, for example, where the farmer would use 10-2-2, he is now using, say 10-3-3, or 10-4-4, or a higher analysis, with greater amount of plant food per ton. That amount of plant food that has been used by the farmer is greater than it was at the time the Royster scale was described, in 50 I. C. C. 34.

Turning to the next page, under the head of Soiling Methods. There has been some change this year, I understand, with respect to the method of soiling fertilizer. Prior to the present year, for several years past, the farmer has been able to buy, even in small quantities, direct from the manufacturer on a credit. This year, the farmer, if he buys in small quantities, must buy from the middleman, or a dealer, and the dealer is almost invariably paying cash. All that is hearsay.

It is my opinion, from inquiries sent out, that the farmer who does not pay cash for his fertilizer now by May 1st, say, and wants to go over, apiece, in the past, or for a time, that the difference between the cash price and the credit price for that length of time runs from 7 to as high as 10 dollars a ton; the information I have got would indicate that the credit price is generally about $8.50 to $10.00 higher than the cash price.

[fol. 198] In connection with my next exhibit, No. 35, which is an extract from the American Fertilizer Magazine, of February 7th, 1925; I also call attention to the second paragraph of that exhibit pertaining to the plant food

content of fertilizer on 1924 account, and of previous years. It indicates, I may say here "any comparison between last year's tonnage and that of any previous year is misleading on account of the higher grade of goods sold in every part of the country in 1924. A campaign for higher analyses is now bearing fruit, and if it were possible to report the plant food units for the two years, the increase in 1924 over the previous year would be at least 25 per cent instead of one-third of that amount."

I call attention to that particularly, if you please, because in subsequent exhibits which I will file, will be comparisons of the tonnage of fertilizer consumed in the various States in the United States. According to the record of the fertilizer interests and the official organ of the fertilizer interests, the plant food unit has a great deal to do with the consumption. Now, you will notice that exhibit also gives the 1924 tonnage for certain States. I was unable to get the 1924 tonnage for States other than that shown in that exhibit. (Tes. 129-132.)

Now, for 1925, I have made some investigation from the State Departments of the various States, and for the fertilizer season of 1925, up to and including April 16th, there has been 740,277 tons consumed, while for the same period of 1924 the consumption was 617,038 tons. Virginia, up to April 15th, 1925, was 264,055, while 1924 was 261,753. South Carolina Agricultural Department declined to give me any statistics as to their state, but they did state to me that the 1925 tonnage consumed in South Carolina was approxi- [fol. 199] mately three and one-half per cent greater than for the same period in 1924. Alabama, taking the period ending March 31st, was 534,000, while for the same period last year was 440,000 pounds consumed. I was unable to secure any figures from North Carolina.

It is a fact that North Carolina, for example, consumes more fertilizer than any State in the Union. The consumption in Arkansas and the other States just west of the Mississippi River, by comparison, is very small, as shown by this statement. I have no statement that shows that for years prior to 1924.

My Exhibit No. 36 is a pamphlet published by the United States Department of Agriculture, Department Bulletin No. 1280, on the consumption of fertilizer mixtures from

concentrated materials, and gives the formulas for the various fertilizer mixtures on pages 14 and 15.

My Exhibit 37 is a report of the Federal Trade Commission of the fertilizer interests, published as of August, 1916. That is brought down to the later investigation made by the Trade Commission.

My Exhibit No. 38, I give the report of the Federal Trade Commission on the fertilizer interests, as of March 3rd, 1923.

From the American Fertilizer Handbook for 1924, I have recapitulated and shown in my Exhibit No. 39, the mixing plants and the fertilizer manufacturing plants throughout the United States. You will notice on pages 2, 3, 4, and 5 of my exhibit I show the plants at the various points, and character of the plants. On page 5 is the definition for the various kinds of plants, that is manufacturing plants and dry mixing plants.

On page 1 of the exhibit I have recapitulated as between the Southeast, the Eastern Trunk Line, Central Freight Association and Southwest, and also shown separately the manufacturing plants from the dry mixing plants. That is in the Southern Territory there are 190 manufacturing plants, while in the 365 mixing plants, of the 555 plants all [fol. 290] told. That is, of course, the record from the American Fertilizer Handbook for 1924.

There are two typographical errors in the recapitulation. That should be "dry mixing", instead of "dry mining." Second, "Southeast" should be "Southwest."

In the Eastern Trunk Line Territory there are 71 manufacturing points, 105 dry mixing plants and 176 plants all told.

Central Freight Association Territory, there are 48 manufacturing plants, 16 dry mixing plants and 64 plants all told.

I note from that they have through error included Kentucky in the Central Freight Association group, and according to my judgment, which should be in the Southeastern Group, but the figures for Kentucky are so small, it won't affect the showing I am endeavoring to make by that exhibit. (Tes. 132-135.)

In the Southwest, the 9702 fertilizer scale territory, or at least a part of it, there are 12 manufacturing points, 28 dry mixing plants, a total of 48.

My exhibit No. 40 is a list of the Class 1 roads in the Southern Territory, fertilizer tonnage transported for the year 1923, and the ratio of the fertilizer tonnage to total tonnage transported. Atlantic Coast Line, you will note, ranks first in the handling of fertilizer tonnage in the South, their fertilizer tonnage, according to the figures for 1923—this is fertilizer tonnage transported, not originated—6.35 per cent. The Southern Railway ranks second; the Seaboard third; Central of Georgia fourth; and the Louisville & Nashville fifth. Taking the Illinois Central Railroad for example, for that year that entire system, both north and south of the River, handled only approximately 186,000 tons; the Y. & M. V. Railroad handled for the year 1923, according to their annual report, 20,717 tons, and the Mobile & Ohio Railroad, 88,137 tons. The New Orleans & [fol. 201] Northeastern, 17,607 tons. So, apparently the movement in the Mississippi Valley is not comparable with that in the Southeast, or particularly the Carolina territory.

My Exhibit No. 41 is a statement of the fertilizer tonnage handled by the Southern Railway Company, years 1907 up to and including 1924. That also is the fertilizer tonnage transported, and not the fertilizer tonnage originated. When you take into consideration the information shown in my Exhibits Nos. 34 and 35, as to the plant food content of a ton of fertilizer today as compared with the previous years, it is my judgment that the fertilizer tonnage, especially for the Southern Railway today, is back to normal basis, and above normal.

I did not have figured the tonnage out on a ton mile basis. If figured on a ton-mile basis, because of the lower average haul on fertilizer, the percentage would, I believe, be slightly less than the ratio shown in that exhibit. Now, the average haul on the Southern Railway in South Carolina, I recall single line, is 112 miles, and in North Carolina it was approximately 100 miles. I have tabulated that information in connection with the State cases.

My Exhibit No. 42 is — statement of the number of cars of fertilizer handled by the Class 1 roads in the Southern Territory for 1923 and 1924. Now, the purpose of that exhibit is to show the average loading of fertilizer and fertilizer materials for the various lines, and for the Southern Territory as a whole. Now, in subsequent exhibits which I will file, I have used in arriving at per car and per car

mile revenue, 23 tons, which is the average loading of the Southern Railway for 1924. That is, the cars transported. For the entire Southern Territory on carload shipments of fertilizer and fertilizer materials, originated, the average loading in 1923 was 22.3 tons, while for 1924 it was 22.4 [fol. 202] tons. Now, as to the carload shipments of fertilizer and fertilizer material transported, the average loading for Class 1 roads in the South was 23.6 for 1923, and 23.3 for 1924. So even with a 15-ton minimum, we are securing an average loading susbtantially in excess of the 15-ton minimum. So, even if the minimum was increased to 20 tons—40,000 pounds—our average loading for the Class 1 roads in the Southern Territory would be above the 20 ton minimum. (Tes. 135-138.)

In other words, so far as any minimum in transportation is concerned, the conclusion that I have reached from that exhibit is that the increase in the minimum from 15 to 20 tons would not mean anything, because your average is now well above 20 tons.

If the minimum was increased to 20 tons, our average loading today on fertilizer is 23 tons, the minimum would not apply—20-ton minimum would not apply, the actual load of 23 tons would apply. Now, we do have some sections that move less than 20 tons minimum. I have particular reference to the South Carolina situation. Up till recently the South Carolina rates were on the ten (10-ton) ton minimum. At least, for a per cent of the tonnage coming out of Charleston, for example, say nitrate of soda, a very high-grade commodity, moving in less than 15-ton lots. Those exceptions, and 20-ton minimum, with an average loading of 23 tons, the freight charges would of course be based on the actual loading. Wherever the actual loading is now less than 20 tons, then to the extent that the minimum would be made 20 tons, it would affect the existing average loading.

Taking the plants at points like Charlotte, North Carolina, interior plants, where those statements have been compliled for all of those fertilizer factories, their average loading now is well above 20 tons. The intrastate average load- [fol. 203] ing in South Carolina was 20 tons and above.

"Q. Now, while we are on this proposition, in connection with a minimum, you take other articles which are carried

under the fertilizer list, where the minimum is today in excess of 15 tons, you recall the statement of Mr. Menzies in that connection. As to these commodities which can easily load heavier, and there is no commercial necessity for it, it is not the purpose of the Southern Railway lines in this proceeding, to reduce the minimum on those commodities?

"A. It is not; no, sir. The statement Mr. Menzies filed, showing the articles on which the fertilizer rates are to be applied, varies with the minimum shown in that exhibit, or shown in the exceptions to the classification. It is substantially the list that applies in connection with the Royster scale, which was forced on us by the Commission in its decision in 50 I. C. C. 34. And we purpose, in connection with this proceeding, to apply the Royster scale to the rest of the articles, being the third Royster scale, and the minimum weights shown in Mr. Menzies' exhibits." (Tes. 138-140.)

It is our purpose, of course, as stated here, to apply these rates on cottonseed meal, but we certainly do not want to stand committed to the proposition that from now on, regardless of what conditions are, that we are eternally going to apply fertilizer rates on cottonseed meal. In the Consolidated Classification Case, it will be recalled that the Southern Carriers proposed the feed rates on cottonseed meal. Personally, I think that is proper. I don't want it understood that we are committed here to apply the fertilizer rates on cottonseed meal forever and forever. We might find in another year, or five years, or in a few years it will be proper to apply something different from the fertilizer rates on cottonseed meal. And, the Commission may not accept the carriers' proposition in this particular [fol. 204] case on that, may prescribe something higher on cottonseed meal, we don't want them to have the understanding that we want to accept it. It may find some demand among the farmers in South Carolina territory particularly for a lower minimum, that Mr. Menzies said that he found in his territory. They do want a lower minimum on fertilizer, particularly to take care of the nitrate of soda moving from Charleston, but that tonnage is comparatively small compared to the entire tonnage, but the

farmers have approached us, and we have had considerable difficulty in South Carolina in putting the minimum up to 15 tons there—the fertilizer interests were very lenient in the South Carolina case, they did propose 40,000 pounds minimum, but on account of the agitation of the farmers—they just could not take advantage of it. The State Commission realized the situation, also the carriers, and we did not press that 40,000-pound minimum.

In so far as these hearings are concerned, it is true that we have had some difficulty in getting the farmers' point of view. For example, we had at least three hearings, at least before the South Carolina Commission, and those hearings were held. We also had very extensive hearings before the North Carolina Commission. That was advertised.

In all those hearings before the South Carolina Commission and before the North Carolina Commission, it is my understanding that not a single farmer, or a single farm organization, appeared at either one of those hearings, and I participated in both hearings.

I have not heard of any dissatisfaction of the 20-ton minimum applying in Alabama at this time. I have made no special investigation of the Alabama situation as to the minimum weight. (Tes. 140-142.)

[fol. 205] My next Exhibit is 43, which is similar to the one filed by Mr. Menzies, and gives the consumption of fertilizer and fertilizer materials for 1916 to and including 1923, and taken from the American Fertilizer Handbook for 1924. It may be well, in connection with this exhibit, however, to call the attention to the consumption of fertilizer in Missouri, Louisiana and Arkansas. My purpose in doing that is, I expect to comment on the Memphis-Southwestern Scale, Docket 9702, in this general territory, in connection with which that scale applies. You will note that the consumption of fertilizer, in what I determine as the 9702 territory, is comparatively nothing as compared with either North Carolina, for example, where the Royster scale is applied generally.

In my Exhibit No. 44, I have shown consumption of fertilizer and fertilizer material in the Southern States for the 12 years ending 1923, compared with the 1924 tonnage.

The recapitulation at the bottom of the exhibit shows the relation of the 1924 tonnage to the tonnage separately for the years 1924 and 1923, and then for the average of the 12 years, 1912 to and including 1923. For example, Alabama, in 1924, the tonnage was 104.3 per cent of the 1912 tonnage, or 4.3 per cent greater than the 1912 tonnage, and for the average for the 12 years, the 1924 tonnage consumed in Alabama was 150.7 per cent of the tonnage consumed for the average of those 12 years. You will notice from that exhibit that Georgia is the only State that is behind in the average consumption, 1924, as compared with the average of the 12 years. Now, when we take into consideration that the fertilizer moving today, each ton of it contains a greater plant food value than in previous years, I think it is safe to say that even the fertilizer consumption in the State of Georgia is above or equal to normal. (Tes. 142 144.)

[fol. 206] It is another fact that with respect to the fertilizer in Georgia and South Carolina, that those States were especially hard hit by the boll weevil.

My next exhibit, No. 45, is a statement of production and consumption of fertilizer in the United States for the years 1919 and 1921. I have chosen those two years because 1919 and 1921 are the only years that I have been able to secure any production figures, and they were secured from Department of Commerce, census of manufacturers, 1921 publication. The purpose of that exhibit is to show, for instance, the State of North Carolina in 1921 produced 550,206 tons of fertilizer, and fertilizer materials, and consumed 695,542 tons. Necessarily they had to go out of the State to supply their local consumption, or the consumption in that State. The purpose of that exhibit is to show just what territory, and what States consumed considerably more fertilizer and fertilizer materials than they do actually produce.

My next exhibit, No. 46, is a map, showing the location of the fertilizer plants in the United States. That map was taken from the publication of the Agricultural Department, and shows the plants of 1918. Now, you will observe from that that the plants are located in the Carolina Territory and in Georgia, with plants at Eastern points, Baltimore,

Maryland, and Pennsylvania points, as well as New York and New England points.

In my next exhibit, No. 47, there is also a map taken from the Department of Agriculture Bulletin, showing commercial fertilizer produced during the year ending June 30th, 1918. The black circles shown on the map vary as to the amount of fertilizer produced at the points in the territory, where the circle appears. I call particular attention to the circle at and around Baltimore, Maryland. Baltimore is one of the biggest producers of fertilizer and fertilizer material in this country. It is a fact that Balti- [fol. 207] more, Maryland, is the largest single producing point of fertilizer and fertilizer materials in this country. (Tes. 144-145.)

My Exhibit No. 48 is a copy of a map filed by Mr. Harper, director of Soil Improvement Committee of the Southern Fertilizer Association, showing relatively the farmers using fertilizers, percentage by counties, for the Eastern Cotton States. Then, I call your attention to the fact that the heavy consumers of fertilizer, farmers using fertilizer, are located particularly in the Carolina Territory, where the Royster scale is now applied, or higher than the Royster scale.

Having particular reference to the State of Mississippi, the principal consumption in the State is in the Southern part, near the seaboard. If it be true that the price of fertilizer to the farmer—if it be true that it is determined by the rate from the nearest port, irrespective of the point from which the fertilizer is shipped, it would seem from that map, and from the facts which you have stated that the rate applying into Mississippi points is generally a short distance.

My Exhibit No. 49 is another map or chart, prepared by Mr. Harper, of the Southern Fertilizer Association, showing the amount spent for fertilizer by counties for the Eastern Cotton States. The figures are shown for 1920, as the exhibit will show. Again, the amount spent for fertilizer i nthe Carolinas stands out very prominently. Mississippi, Mr. McGehee, as indicated on my previous exhibit, is negligible.

I will refer to the various rate adjustment territories in the South. These territories will probably also be referred

to by witnesses who will follow me. In order that the Examiner and the Commission may have a bird's-eye view of these territories, I wish at this point to file my Exhibit No. 50, which outlines the Carolina Territory, the South-[fol. 208] eastern Territory, divided as between the Atlanta sub-territory and the Montgomery sub-territory, also the Mississippi Valley Territory. (Tes. 145-147.)

Generally speaking, the Mississippi Valley rate adjustment territory is a narrow wedge of territory lying east of the Mississippi River and on and west of the lines of the N. C. & St. L. Railway from Paducah, Kentucky, to Paris, Tennessee, thence via the L. & N. Railroad to Jackson, Tennessee, thence via the M. & O. Railroad through Meridian to Mobile, Alabama, including also Columbus and Aberdeen, Mississippi, lying just east of the line of the M. & O. Railroad, and including also Helena, Arkansas, on the west bank of the Mississippi River. It will be observed that the Mississippi Valley rate adjustment territory comprises a small part of Western Tennessee, practically the entire State of Mississippi, that part of Louisiana lying east of the Mississippi River and a small portion of Southwestern Alabama lying on and west of the M. & O. Railroad.

The Southeastern rate adjustment territory is more extensive, and lies just east of the Mississippi Valley rate adjustment territory. On the map it is shown as that territory lying east of the line of the M. & O. Railroad from Corinth, Mississippi, to Mobile, Alabama, and on and south of the Memphis Division of the Southern Railway from Corinth to Chattanooga, including Chattanooga but excluding Corinth, south of a line running via the Southern Railway from Chattanooga to Cleveland, Tennessee, an imaginary line from Cleveland through Murphy, North Carolina, to Walhalla, South Carolina, and thence south of the lines of the Blue Ridge Railroad, Southern Railway and Atlantic Coast Line Railroad, through Seneca, Anderson, Belton, Abbeville, Greenwood, Newberry, Alston, Columbia and Wilmington. In a general way the Southeastern [fol. 209] rate adjustment territory includes practically the entire State of Alabama, all of the States of Georgia and Florida, the large portion of the State of South Carolina and a small portion of eastern Tennessee. (Tes. 147-148.)

By Com. Eastman:

"Q. Now, that is not the way it is shown on the map, as I read the map. Would not the full lines bound the Southeastern Territory, the broad white lines?

"A. East of the M. & O. Mobile, up to Paducah.

"Q. Yes, but you were simply describing the part of the Southeastern territory which is embraced in the Montgomery sub-territory and the Atlanta sub-territory?

"A. Yes, sir; I was including that. I was trying to differentiate between the Atlanta sub-territory and Montgomery sub-territory in the Southeast.

"Q. You were not defining the entire Southeastern Territory?

"A. In a general way; yes, sir.

"Q. Well, that extends up into Tennessee, does it not, according to the map there?

"A. According to the map, it does; but the definition I gave is a correct definition for the Southeast. That line, technically speaking, Mr. Commissioner, between Kentucky and Tennessee, is erroneous, the Southeastern line ought to be the line of the Southern Railway, Memphis Division south of that."

We do not include in the Southeast this part that I have described and termed Carolina Territory, south of Walhalla line; that is the Carolina Territory; sometimes for rate-making purposes, Walhalla is included in the Southeastern rate adjustments.

"Q. The way you gave your definition, I understood you to say it included that territory. The way you read it, you wound up by saying it included the greater part of South Carolina.

[fol. 210] "A. Just a small portion of the State of South Carolina, and Tennessee. I should have said a small portion.

"Q. You did say large, though.

"A. I did." (Tes. 148-149.)

The Southeastern Territory, it will be observed, is divided into two sub-territories for rate-making purposes, as far as the adjustment from the Ohio River, etc., is con-

cerned, the Atlanta sub-division and the Montgomery sub-division. The Montgomery sub-division lies east of the Mobile & Ohio Railroad, and on and south of the Memphis Division of the Southern Railway from Corinth, Mississippi, to Decatur, Alabama, including Decatur but excluding Corinth, and on and west of the Louisville & Nashville Railroad from Decatur to Birmingham, the Central of Georgia Railway from Birmingham to Columbus, Georgia, and the Chattahoochee and Appalachicola Rivers from Columbus, Georgia, to the Gulf. The Atlanta sub-territory includes the remainder of the Southeastern Territory and lies just east of the Montgomery sub-territory.

The Carolina territory lies north and east of the Southeastern territory and south of the main line of the Norfolk & Western Railway from Norfolk through Lynchburg and Roanoke to Bristol, Tennessee, thence via the Southern Railway, Knoxville Division, from Bristol to Chattanooga. Although the West Tennessee territory, including Knoxville and Bristol, is shown in the Carolina rate adjustment territory, nevertheless, it is a fact that, generally speaking, for rate making purposes the Tennessee Territory north of Chattanooga is usually included in the Southeastern rate adjustment territory.

It is a fact that the significance of those groupings at the present time relates to a great extent to rates from Ohio River Crossings, especially as far as the Atlanta and Montgomery sub-territories go, but it is not correct as to the [fol. 211] Carolina Territory, because the Carolina Territory—that definition applies to a great extent to the East from the Southeast to Carolina, and as to the Associated Railways Exception Sheet Classification in the Carolinas, and general adjustments of that sort, but it is true that the Montgomery and Atlanta sub-territories, applies generally at the present time in connection with the Ohio River adjustment. That is true also as to this Carolina Territory south of Walhalla line, which is sometimes called Carolina sub-territory. (Tes. 150-151.)

My Exhibit No. 51 is a comparison of rates which have been prescribed or approved by the Commission on fertilizer for single line application, compared with the North Carolina scale, or Royster scale, or the scale which the car-

riers are proposing in this proceeding. Similar to Exhibit filed by Mr. Menzies—well, I won't take up any further time commenting on it—although I would like to call attention to that Meridian case, wherein the Meridian interests in that case requested the Commission to prescribe for application in the Meridian case the Royster scale, 50 I. C. C. 34; the Commission held that transportation conditions did not justify the Royster scale in the Meridian territory, and prescribed higher than the Royster scale for that territory.

Exhibit No. 52 is similar to 51, only applying to joint line hauls.

It is a fact that after the Meridian case was decided, and when the rates were suspended, and came back before the Commission, that at that time the carriers had determined to apply the Royster scale, and that the scale which the carriers then voluntarily proposed in the Meridian case was substantially the Royster scale, with just a mere difference in gradation. It was substantially the Royster scale, only several of the mileage blocks had been changed to conform [fol. 212] to what the carriers thought was proper at that time. My exhibit shows lower rates in the Meridian case than in the Royster case, for 85 miles. That is the scale that the carriers permitted, and which the Commission suggested for application in the State of Georgia. That is primarily the scale which the carriers recommended for the Meridian case. It is substantially the Royster scale.

As to how it happens that the Royster scale begins at 35 miles: The Royster scale was prescribed for application from Norfolk, Virginia to North Carolina points, and the mileage under 35 miles became the Virginia intrastate scale, therefore, there was no necessity for prescribing rates for distances between 5 and 35 miles, because it would have been the Virginia intrastate traffic. The Commission never prescribed rates for shorter distances than 35 miles. Not in the Royster case, they do not, no, sir; but throughout my exhibits I have used for the shorter distances under 35 miles, the North Carolina Commission's rates for those distances because the scale which the Interstate Commerce Commission prescribed in the Royster case was identical to the North Carolina intrastate scale. So, it may be mis-

leading somewhat in my exhibits when I refer to the Royster scale for those shorter distances. (Tes. 151-153.)

In my Exhibit No. 53 I have made an exact copy of the Supplemental Fourth Section Order 8945, issued by the Commission in connection with the Goldsboro Case. It is true that the Commission in the Royster case, or the Goldsboro case, did not specifically prescribe the Royster scale for application from North Carolina to South Carolina, or from North Carolina to Virginia, but it is also true that in connection with this Fourth Section end of the Goldsboro case, the Commission denied the carriers relief, even by the short lines, or any other line, unless they did apply the Royster scale from Wilmington to South Carolina, and from [fol. 213] Wilmington to Virginia, so it is reasonable to say that the Commission did by that Fourth Section order prescribe as rasonable rates the Royster scale from Wilmington to South Carolina points, and from Wilmington to Virginia points. In the formal complaint in that case, the rates from Virginia and South Carolina points were not involved. The Fourth Section application covering South Carolina and Virginia was cited in that case, and the carriers—Southern Railway particularly, was denied any Fourth Section relief at all, and then when we filed application with the Commission to secure Fourth Section relief, they refused to give it to us, unless we did apply the Royster scale from Wilmington, to South Carolina, and from Wilmington to Virginia, so obviously it cannot be said that the Commission did not in that Fourth Section application prescribe the Royster scale from Wilmington to South Carolina and from Wilmington to Virginia The rates are on that basis today. Tes. 153-155.)

Exhibit No. 54 is comparison of rates which the Commission prescribed on fertilizer from Mount Pleasant, Tennessee, to Mississippi points increased under the general increases of 1918, and 1920, reduced under Docket 13293, compared with the Royster scale, simply increased and reduced.

Exhibit No. 55, I have shown the Southern Railway Carolina Fertilizer scale, which scale you can use as a standard for fertilizer traffic east of Atlanta to North and South Carolina, and in that portion of Virginia south of Lynch-

burg. It is true there are many commodity rates in that territory that are on the Third Royster Scale basis. The point I wish to make here is that you will observe that the scale is substantially the same as the scale which the Commission fixed in the first Royster scale. In fact, following the first Royster Case we did establish that scale for application in the Carolina territory. Those rates today [fol. 214] are higher than the third Royster scale, you will not by the comparison. Now, as I indicated—I do not want the inference left that all of the North Carolina traffic is moving on that scale, because it is not a fact—specific commodity rates that are slightly higher than the Royster scale, and many of them the same as the Royster scale.

I will now deal with the adjustment of rates on fertilizer and fertilizer materials to, from, and between points in South Carolina. I will also deal with the adjustment from Ohio River Crossings to Carolina Territory, from Charleston to Georgia points, and will explain the situation as to the Southern Railway rates in the State of Virginia. (Tes. 155-157.)

The rates from Charleston, South Carolina, to South Carolina destinations prior to March 15, 1924, at which time the South Carolina Commission reduced the intrastate rates on fertilizer, reflect the level of rates prescribed by the South Carolina Railroad Commission in their Circular 135 of November 1, 1909, which circular was issued following court litigation, and represents a compromise between State authorities and the carriers. On March 15, 1924, the South Carolina Commission reduced the intrastate rates in South Carolina and on March 8, 1925, ordered a further reduction in the South Carolina intrastate fertilizer rates, which latter reductions, however, were prevented from going into effect by orders of the Court. As far as the South Carolina situation is concerned, I expect to deal with that later on in my testimony, explaining in detail the various changes in the South Carolina rates and the results brought about by such changes.

From Savannah, Georgia, to South Carolina points, because of the competition between the South Atlantic Ports of Savannah and Charleston, South Carolina, the carriers serving Savannah have found it necessary in the past to

[fol. 215] maintain a competitive adjustment from Savannah to South Carolina points which would place Savannah in position to compete with Charleston for South Carolina traffic, the rates from Charleston being controlled by the South Carolina Railroad Commission. The present rates from Savannah to South Carolina points reflect, to a great extent, the mileage scale of rates in effect and prescribed by the South Carolina Railroad Commission prior to March 15, 1924. For example, from Savannah to Aiken, South Carolina, 128 miles, the present rate is $3.04, which is the South Carolina scale prior to March 15, 1924, for that distance. To Allendale, South Carolina, 72 miles, the present rate is $2.25, which also is the South Carolina scale prior to March 15, 1924, for that distance. To Bamberg, the rate from Savannah, Georgia, for 112 miles, is $2.82, which also is the South Carolina Commission scale prior to March 15, 1924, for similar distances. To many points, especially for the longer hauls, the carriers were not willing to observe the South Carolina Commission made rates in adjusting the rates from Savannah, Georgia, and to those destinations a relative adjustment was made following the reduced rates of the South Carolina Commission in 1909, placing Savannah on a competitive basis with Charleston. The Savannah interests have steadfastly maintained that because of the parity on rates on fertilizer as between Charleston on the one hand and Savannah on the other to certain Georgia destinations that the carriers should accord Savannah to South Carolina long haul destinations the same rates that are operated from Charleston under the orders of the South Carolina Railroad Commission. The carriers were not willing, even for competitive reasons, to apply the long haul rates of the South Carolina Commission which were entirely too low from Savannah and made the adjustment from Savannah on a relative basis with respect to the intrastate rates from Charleston. In this [fol. 216] connection, it will be noted from my Exhibit No. 56 that the rates from Savannah, Georgia, to South Carolina points are the same, in some instances, as the third Royster scale, and are in no case lower than the third Royster scale. It will be also observed that the same situation is true as to the rates from Charleston prior to

March 15, 1924. In other words, the rates from Savannah to South Carolina destinations have in the past been permitted to be controlled because of the competition between Savannah and Charleston by whatever rates the carriers were forced to maintain from Charleston. (Tes. 157-159.)

Augusta, Georgia, is located immediately across the Savannah River from the State of South Carolina. Hamburg and North Augusta, suburbs of Augusta, are in fact located in the State of South Carolina. Because of this situation and because of the fact that traffic from Augusta to South Carolina destinations could be drayed or handled to North Augusta or Hamburg and be accorded the rates prescribed by the South Carolina Commission on intrastate traffic, the carriers have found it necessary to accord in the past rates from Augusta, Georgia, to South Carolina destinations on classes and commodities the same as contemporaneously maintained by order of the South Carolina Commission on South Carolina intrastate traffic. Competition between Augusta and the South Carolina jobbing points also had its effect upon the application of the South Carolina intrastate level of rates from Augusta to South Carolina destinations. Prior to 1924, the rates on fertilizer from Augusta, Georgia, to South Carolina points were mile for mile the same as the rates applicable intrastate in South Carolina, and the same as the mileage scale of rates prescribed by the South Carolina Commission in effect prior to March 15, 1924. As I will indicate in my testimony later on, the South Carolina Commission issued a circular in 1923 ordering in the third [fol. 217] Royster scale for application intrastate in South Carolina. Following the issuance of this circular, some of the carriers operating from Augusta did reduce many of their rates so as to conform with the third Royster scale, or to basis of the scale contained in the order of the South Carolina Commission, which, as I have indicated, was in fact on basis of the third Royster scale. It is true that before the third Royster scale became effective in South Carolina the South Carolina Commission's order was withdrawn.

It will be observed from my Exhibit No. 56 that the rates from Augusta, Georgia, are either on the Royster scale or

are higher than the Royster scale, reflecting, as I have indicated, the rates in effect on South Carolina intrastate traffic prior to March 15, 1924.

Rates from Atlanta, Georgia, to South Carolina points reflect mileage scales that were in effect prior to the decision of the Commission in the first and third Royster cases. The Atlanta rates, it will be noted from Exhibit No. 56, are in every case higher than the third Royster scale, and applying the Royster scale from Atlanta to South Carolina points will mean substantial reductions on this traffic.

From Charlotte, North Carolina, to South Carolina points, the present rates reflect rates not lower than the Royster scale, and in most instances rates substantially higher than the Royster scale. For example, from Charlotte, to Bamberg, 175 miles, the present rates are $3.50, and the third Royster scale $3.27. The first Royster scale, revised in accordance with the general increases and reductions for 175 miles, would be $3.50, or the same as the present rates from Charlotte to Bamberg. The rates from Charlotte, as will be noted from my Exhibit No. 56, are in most instances higher than the third Royster scale, which is proposed in this proceeding, but in no instance is it lower [fol. 218] than the third Royster scale.

From Wilmington, North Carolina, to South Carolina points, the present rates are on the third Royster scale basis, in accordance with amended Fourth Section Order 8945 of the Interstate Commerce Commission, dated November 10, 1924.

The origins which I have used in connection with this exhibit are the principal points shipping into South Carolina, and it will be observed that prior to March 15, 1924, the South Carolina rates were the same or higher than the Royster scale, the Savannah rates the same or higher than the Royster scale, the Atlanta rates generally higher than the Royster scale, the Charlotte rates generally the same or higher than the Royster scale, and the Wilmington rates on the Royster scale. Prior to amended Fourth Section Order 8945, the rates from Wilmington to many South Carolina points were the same, distance considered, as the intrastate rates within South Carolina. Prior to the reductions made

intrastate in South Carolina in March, 1924, there was quite a substantial movement of fertilizer from Savannah, Augusta, Atlanta, Charlotte, Wilmington and some points like Wadesboro, North Carolina, into South Carolina. (Tes. 159-162.)

There is a correction I wish to make on the second page of my Exhibit No. 56; under the heading of Atlanta on Page 2, it should be Augusta, and where Augusta is shown, it should be Atlanta; the two names have been transposed.

My Exhibit No. 57 is a statement of the present and proposed rates from Charleston, Savannah, Augusta, Atlanta, Charlotte and Wilmington, to North Carolina points; that situation was covered by a previous witness, and I will not take up any time to comment on it, it is just merely a statement of the present and proposed rates.

[fol. 219] From such points of origin as Anderson, Blacksburg, Chester, Columbia, Greenville, Rockhill and Spartanburg, S. C., to destinations in the state of South Carolina, the present rates generally speaking are either the same as or higher than the Royster scale. Prior to the decision of the Commission in the first Royster case, that was decided in February, 1916, the carriers maintained a set of rates on fertilizer and fertilizer material- interstate between North and South Carolina points on a basis higher than that approved by the Commission in the Royster case. Following the Commission's decision in the first Royster case, we were immediately petitioned to revise our rates between North and South Carolina points when higher than the scale prescribed by the Commission in the first Royster case, but not once did we have the opportunity of revising any other rates when lower than the first Royster scale. The carriers were confronted with the same situation following the decision of the Commission in the Third Royster Case in 1918. In other words, whenever the Commission's decision in the Royster Cases resulted in reduced rates, we were immediately threatened with additional formal complaint unless your rates were promptly revised to basis no higher than that prescribed by the Commission in the Royster Cases. So, since 1916, we have been continually giving up revenue in the Southern Territory based on the rates which the Commission prescribed in the Royster Cases without at the same time gaining any increases in the rates when they

were lower than those prescribed by the Commission in the Royster Cases.

My Exhibit No. 58 is a statement of the present and proposed rates from South Carolina fertilizer shipping points to North Carolina points; Anderson, S. C., Blacksburg, S. C., Chester, S. C., Greenville, S. C., Rockhill, S. C., and Spartanburg, S. C., to North Carolina points. It will be observed that the present rates are substantially on the [fol. 220] Third Royster Scale. (Tes. 163-165.)

Speaking about the cases where the Royster Scale would reduce the rate and how I account for that: Prior to the time that the Commission decided the First Royster Case in 1916, we maintained a level of rates between North Carolina and South Carolina that were higher than the rates which the Commission prescribed in the First Royster Case. Following the First Royster Case, we revised our rates in the Carolinas to the basis of the First Royster Scale. As you know, the carriers were never satisfied with the level which the Commission prescribed in the Third Royster Case, and at some of these points from South Carolina to North Carolina, and North Carolina to South Carolina, we have never put those rates all of them on the Third Royster basis. So, generally speaking, when the rates between the Carolinas, North and South, show higher than the Third Royster Scale, it does in fact reflect the first Royster Scale, that is, the rates have not been, some of them have not been revised.

There may be a few where the present rate is lower than the Royster Scale; there should not be any.

Generally speaking, from those South Carolina points to the North Carolina points, the scale generally governs; there may be a case here and there where we departed from the scale for competitive reasons, as you suggest. I am unable at this time to give you an explanation of the rate from Spartanburg to Forest City, of 158, and it should be 214 under the scale, but probably some competitive feature, I don't recall what that is, what caused that rate to be less than the Royster Scale. It may be a typographical error.

My Exhibit No. 59 is a statement of the present and proposed rates from Columbia, S. C., to North Carolina points having a population of over 1,500, and there it will be ob- [fol. 221] served that the present rates—You will observe

that the present rates from Columbia to North Carolina points are either on the Royster Scale, or are generally speaking higher than the Royster Scale. You will notice that Albemarle, N. C., is $3.27, while the Royster Scale would make it $3.49. I would be glad to look into that situation; there is a competitive situation there at Albemarle, and I wouldn't like to testify now without verifying it. But generally speaking, the rates from Columbia to North Carolina points are on the Royster Scale and higher than the Royster Scale. (Tes. 165-167.)

My Exhibit No. 60 shows the rates from Virginia cities, Norfolk, Richmond, Lynchburg and Petersburg to North Carolina destinations. It will suffice if I refer to Page 2, showing the results of the recapitulation of the information on that exhibit. From Norfolk, Va., you will note that the Norfolk rates are in fact on the Royster Scale, that is the Commission's decision in 50 I. C. C. 34. The rates from Richmond, Va., to the North Carolina points are slightly higher than the Royster Scale. The rates from Lynchburg, Va., to North Carolina points are also slightly higher than the Royster Scale. This is likewise true from Petersburg. There are fertilizer factories at all those points.

As to how it happens that these points in Virginia, which are all manufacturing points, have been content to have rates higher than Norfolk into North Carolina: You take Richmond, for instance, we maintain from Richmond to that North Carolina Territory, especially south of Greensboro, and have maintained for years, on classes and commodities, a parity of rates between Norfolk and Richmond; in connection with the fertilizer adjustment they were willing to accept that basis, in fact they did file a formal complaint with the Commission, and the rates shown on here are those which they agreed to operate.

[fol. 222] "Q. Well, this doesn't show that they have had the same rates at Norfolk in all cases.

"A. You take Albemarle, N. C., Norfolk is $4.39 at present, Richmond is $4.39; Andrews, Norfolk $5.97, Richmond $5.97; Asheboro, Norfolk $4.28, and Richmond $4.28. I think you will find except for the short haul points——

"Q. Take Ayden, Richmond $3.15, Norfolk $2.82.

"A. That is one of the short haul points.

"Q. Take Beaufort.

"A. That is a water competitive point.
"Q. Belhaven, short haul, I suppose?
"A. Short haul." (Tes. 167-169.)

It is a fact that when Richmond filed this complaint before the Commission within the past two years, that they stated they were satisfied with the establishment of the Royster scale from Richmond to the North Carolina destinations at that time. They accepted the Royster Scale to the short haul points, and the Norfolk rates, which were higher than the Royster Scale, to the longer destination points. We intend to break up that adjustment now; we intend to apply literally from the Virginia cities the Royster Scale rates, which we propose.

In connection with the rates from Charleston to Georgia destinations, I wish to file at this time my Exhibit No. 61, which shows the present rates and mileages on fertilizer from Charleston to Georgia points, as compared with what the rates would be under the carriers' proposed basis, namely, the Third Royster Scale, and also the same comparison from Savannah to Georgia destinations under the present and proposed basis. At the outset, I made mention of the fact that the Charleston to Georgia destination rates have had an adverse effect upon the intrastate rates in Georgia, and it will probably be well to explain in detail how the adjustment from Charleston to Georgia points was [fol. 223] first brought about. There is no doubt that the witness dealing with the Georgia situation will unquestionably refer to the rates from Charleston to Georgia points having their effect upon the intrastate adjustment within the state of Georgia.

The old South Carolina & Georgia Railroad (now a part of the Southern Railway) extended from Charleston, S. C., to Augusta, Ga., and in connection with the Georgia Railroad and the Georgia Southern & Florida Railroad made a through line from Charleston, S. C., to such important Georgia points as Atlanta, Ga., Athens, Ga., Macon, Ga., Valdosta, Ga., and intermediate points. The old South Carolina & Georgia Railroad, with its route from Charleston to Georgia points through Augusta, did not serve Savannah nor any other Georgia ports; likewise, the Georgia Railroad with its lines from Augusta to Atlanta did not

serve any Georgia port, and its interest was naturally in the movement of fertilizer from Charleston to afford it its maximum haul from Augusta. In order to meet the Savannah competition, the old South Carolina & Georgia Railroad, in connection with the Georgia Railroad, made rates on fertilizer and fertilizer material from Charleston, S. C., to points on the Georgia Railroad no higher than the rates which were applied from Savannah, Ga., to common points, extending this basis to the intermediate destinations. Other connections of the Charleston route, which did not reach Savannah or Brunswick, joined in rates from Charleston to such points as Columbus, Ga., Fort Valley, Ga., Hawkinsville and Valdosta no higher than the rates from Savannah, although in many instances were considerably greater. Many of these lines were also enabled to secure a longer haul, and does secure much more revenue on the Charleston traffic than on traffic moving from Savannah or Brunswick, and it was obviously immaterial to those lines from which [fol. 224] port the fertilizer moved. This adjustment made effective by the old South Carolina and Georgia Railroad soon brought about a complaint before the Interstate Commerce Commission from the Savannah interests. The Interstate Commerce Commission held in effect that, considering the revenue, the wisdom of the Charleston line might be questioned in meeting the rates from Georgia ports, but there was no legal reason developed why lines and routes from Charleston should not meet this competition from Georgia ports if they saw fit to do so. (Savannah Bureau of Freight and Transportation vs. Charleston & Savannah Railway, 7 I. C. C. 458.) (Tes. 169-171.)

With the decision of the Commission in the Savannah case, the Savannah Fertilizer shippers then brought complaint before the Georgia Commission, taking the position that rates from Charleston were applied for long distances to points in Georgia the same as from Savannah to the same points for shorter distances, and therefore by comparison the rates from Savannah were too high. It was insisted that Savannah and Georgia points were entitled to their natural advantage according to distance, and should be accorded lower rates than those applicable from Charleston because of the less distance from Savannah to

the Georgia points. The fact that the same rates were applied from Charleston into Georgia as were applied from Savannah for shorter distances resulted in the Georgia Commission substantially reducing the Georgia intrastate rates. The basis observed by the old South Carolina & Georgia Railroad has been continued to a great extent, except that to certain portions of Georgia, the rates from Charleston are made differentials higher than from Savannah, in the same manner that the rates from Savannah to certain South Carolina destinations are made differentials higher than the rates from Charleston. It will be noted [fol. 225] from my Exhibit No. 61 that it is proposed to apply from Charleston to Georgia points the Third Royster Scale for the actual distance, the same as it is proposed to apply from Savannah and all other manufacturing points. Of course, the elimination of the low and competitive basis heretofore observed from Charleston to the Georgia points, and the substitution of a mileage scale would of necessity result in some increases in the rates from Charleston to Georgia points, unless some unreasonably low basis is applied from Savannah. (Tes. 171-172.)

In applying the equalization basis from Charleston and Savannah to Georgia points, there of course was no observance of the long and short haul clause of the Fourth Section of the Act.

It is very obvious from what I have said that the proposed revision will remove the cause of complaint of the Savannah interests respecting rates from Savannah, Ga., and South Carolina points, as compared with rates from Charleston to the same destinations.

I state that we propose to apply the mileage scale out of the ports on domestic traffic. Mr. Menzies had reference only to the import traffic. On the domestic traffic, we propose to apply from each port the Royster Scale, based on distance; on the import, as Mr. Menzies explained, there will be some port equalization on that imported material.

"Commissioner Eastman: Won't that lead to some controversy as to what is import traffic on fertilizer, the same question that arose in North Carolina at Wilmington?

"Mr. McGehee: It may revive some dispute, Mr. Commissioner, I think about all the questions have been raised,

but they are liable to come up again. I think, though, Mr. Commissioner, that that proposition now is before the Federal Court, and we will probably have a decision from them [fol. 226] on that question prior to the decision in this case; that is my information.

"Mr. Gwathmey: The proposition is before the Federal Court on an order made by the North Carolina Corporation Commission, in which the Corporation Commission laid down an entirely different rule from that announced by the Interstate Commerce Commission in the Goldsboro Case.

"Commissioner Eastman: And the carriers agree with neither?

"Mr. Gwathmey: Neither one." (Tes. 172-174.)

In connection with practically every state fertilizer case that I have participated in, there has been advanced as a reason for reducing the state rates, the low scale that the Southern Railway maintains on its Richmond division in the state of Virginia. In my Exhibit No. 62, I have shown the six scales operated intrastate by the Southern Railway into Virginia, and have shown the scale of the Atlantic Coast Line Railway, and the scale of the Norfolk Southern. In exhibits which will follow, I will show the rates of the Norfolk & Western Railway and the rates of the Chesapeake & Ohio Railway. But first, if you please, I would like to compare the last four columns, the rates of the Coast Line, the Seaboard and the Norfolk Southern with the Royster Scale. Those are all fertilizer scales. I will explain how we got the six scales before I leave the exhibit. First, I would like to call attention to the comparison between the Coast Line, the Seaboard and the Norfolk Southern scales. You will notice that those scales are generally higher or the same as the Royster Scale, generally higher.

Now, we come to the Southern Railway Scales. You will find, especially for the short hauls, that they are materially less than the Royster Scale, and that they are materially less than the rates operated by any other carrier in the [fol. 227] State of Virginia. I may state first that under Column 1 is the Richmond Division Scale, that applies to and from points on the Richmond Division of the Southern Railway, in connection with the 25 per cent territory out-

lined in Ex Parte 74, that is south of the line of the Norfolk & Western Railway from Norfolk through Lynchburg to Bristol. Scale No. 2 applies between the Richmond division and points in the 33 and 1/3 per cent territory, that is interterritorial application. Scale No. 3 is the 40 per cent territory. Under Scale No. 4 are the Norfolk Division rates, applicable in the 25 per cent territory on the Norfolk Division. Under Scale 5 is the 33 and 1/3 per cent territory on the Norfolk Division. And No. 6 is the 40 per cent territory.

Now, as to the short haul rates on the Southern Railway in Virginia. It is probably known that the Southern Railway was chartered under the laws of the State of Virginia, and under their charter there is a provision to the effect that the maximum rate that the Southern Railway can charge on fertilizer in the State of Virginia is 4 cents per gross ton mile with a minimum charge for 10 miles. Now, if we take 4 cents a gross ton mile under the charter prior to any of the advances, it would be 35 cents a net ton or 40 cents a gross ton; under General Order No. 28, that 35 cents a net ton goes to 40 cents; under Ex Parte 74, it goes to 50 cents, and under the 10 per cent reduction it becomes 45 cents. You will notice in the scales there, it is 45 cents for 10 miles and under, in accordance with the charter provision. However, I wish to say that at the present time the Virginia State Commission has authority to regulate these rates, and we do not anticipate any trouble in getting those short haul rates where they belong at this time. (Tes. 174-176.)

That is the old Richmond & Danville Railroad; we took over their charter, you understand. There is another thing [fol. 228] about that Richmond Division scale that I want to explain; you will notice for the longer distances that practically all of our rates are substantially the same as the Royster Scale, with the exception of that Richmond division around about 152 miles. When those rates were originally established, the Chesapeake & Ohio Railway had a direct line from Richmond to Lynchburg; it made the rate; the old Richmond & Danville Railroad in an attempt to meet the competition of the Chesapeake & Ohio Railway from Richmond to Lynchburg, undertook to publish by its

route through Danville, some 60 miles longer, the same rate as maintained by the Chesapeake & Ohio Railway for their direct line from Richmond to Lynchburg. The Virginia Commission had a very absolute long and short haul provision at that time, and that resulted in cutting back the stations on the old Richmond & Danville Railroad through Danville, including Danville; that is the reason why the rates between 125 and 150 and along in there are less than the rates on the other divisions.

As to whether we propose to apply the Royster Scale in Official Territory in Virginia, as well as in Southern Territory: That is the line of the Southern Railway north of Lynchburg that I was speaking of as the Southern Railway 40 per cent territory, and I don't see how we can consistently apply the Royster Scale on the Southern Railway in Virginia without at the same time applying it north of Lynchburg, and I am confident that the management will apply the Royster Scale throughout the Southern Railway's territory in Virginia.

It would appear from Exhibit No. 62 that we are proposing to make substantial increases on the Virginia intrastate traffic, and in order to show exactly what it means as to the Virginia intrastate traffic in connection with the Southern [fol. 229] Railway, I have secured the origin and destination points for the month of March, 1924, in connection with which there has been an actual movement; I have shown those points on my Exhibit No. 63, indicating the present rates and the proposed rates. Alexandria to Bealeton, that is 40 per cent territory, the present rate is $1.89, and under the Royster Scale it will become $1.80. (Tes. 176-178.)

During that month I took between points on our line in Virginia every situation where there was a movement. This reflects exactly what the application of the Royster Scale will amount to, as far as the Southern Railway's traffic is concerned. Obviously, from my Exhibit No. 62, the application of the Royster Scale on the Atlantic Coast Line and the Seaboard Air Line, etc., would mean reductions for those lines.

At this time, I would like to file my Exhibit No. 64, which is a chronological and historical statement of the rates in South Carolina on fertilizer and fertilizer materials

from 1890 up to the present time. The South Carolina Commission was organized in the latter part of 1878, and when it prescribed its first line of intrastate rates for application in South Carolina, it followed very closely the rates then prevailing in the adjoining state of Georgia. In the fifth Annual Report of the South Carolina Railroad Commission to the Governor of the State of South Carolina, *and* is the following:

"We were impressed with the importance of adopting some system which the public and not the railroads alone could grasp, and to this end the reports of the different Railroad Commissions were studied. The thoroughness of the system adopted by the Georgia Commission, together with the advisability of the two states so closely allied in business having a uniform method, prompted us to conform to this system as nearly as the laws under which we have to work would permit."

[fol. 230] It is therefore obvious that at least originally the intrastate rates on fertilizer and other commodities in South Carolina were predicated on the rates prescribed by the Georgia Commission. Under Column "A" of my exhibit is shown the rates in effect intrastate in South Carolina in 1890; Column "B", 1895; Column "C", 1897; Columns "D" and "E", the reduced rates of 1905. Now, dealing with the reduced rates prescribed by the South Carolina Commission in 1909, as shown under Columns "F" and "G". (Tes. 178-180.)

In 1909, representatives of the South Carolina Legislature appeared before the South Carolina Railroad Commission, and requested an investigation of the rates on fertilizer intrastate in South Carolina, with a view of determining whether or not these rates were higher or discriminatory as compared with the rates which had just been adopted for intrastate application in Alabama by the Legislature of that state, and which rates were the same as those applicable in Georgia. I have indicated that the Georgia rates were reduced prior to 1909, due solely to the fact that, mileage considered, lower interstate rates were maintained from Charleston to Georgia points.

The representatives of the Legislature insisted that the South Carolina Commission was not properly taking care of the people of South Carolina, in view of the fact that the Georgia Commission had reduced the fertilizer rates in their state, and also that the Alabama Legislature had reduced the fertilizer rates in Alabama.

The result of the proceeding before the South Carolina Commission was that there were finally established the reduced rates, as shown in Column "F" of my Exhibit No. 64. Immediately some of the South Carolina carriers took the matter to the courts, resulting in the suspension or can- [fol. 231] cellation of Order No. 129 of the South Carolina Commission, and the rates shown in Column "F" of my Exhibit, and a rehearing was had before the South Carolina Commission. The effect of this rehearing was that the South Carolina Commission finally established by their Order No. 135 the rates shown in Column "G", the effective date of which rates was December 6th, 1909. It is only fair to state that, in connection with the 1909 controversy, there were no representatives of the fertilizer interests or the public who took part in the case; the railroads were represented, together with two members of the Committee of the Legislature and the State Commissioners.

The rates under Column "H" represent the 1909 rates increased 25 per cent under General Order No. 28 of the Director General; while the rates under Column "I" represent the increases under Ex Parte 74 of 25 per cent, August 26th, 1920; and Column "J" represents the 10 per cent reductions under the Interstate Commerce Commission's proceedings under Docket 13293.

As to the rates shown under Column "K" of 1923; in the latter part of 1922, the carriers operating in South Carolina were requested to meet the South Carolina Commission in an informal conference with the view of determining why the rates in South Carolina on fertilizer should not be put on a basis no higher than that applying from Charleston to the North Carolina points, and generally between points in the Carolina Territory, or the rates prescribed by the Interstate Commerce Commission in the Third Royster Case. The carriers explained to the South Carolina Commission at this conference that they had proposed to the Georgia Commission a line of rates for intra-

state application in Georgia that were substantially the same as the Royster Scale, but with certain changes in some of the mileage blocks to bring about what the roads considered a more harmonious adjustment. The carriers [fol. 232] objected to the adoption of the Royster Scale, and submitted in lieu thereof the adoption of the proposed Georgia Scale, which scale had in effect been approved by the Interstate Commerce Commission in the Meridian Case, 66 I. C. C. 179. There were several informal conferences between the carriers and the South Carolina Commission, as a result of which the carriers finally consented to the adoption of the Royster Scale for application intrastate in South Carolina. The South Carolina Commission thereupon issued their Circular No. 271, of February 2nd, 1923, ordering in the Third Royster Scale for application intrastate in South Carolina. This scale was promptly put into tariff form by the carriers, and copies of our tariffs filed with the South Carolina Railroad Commission to become effective February 15th, 1923. Before the tariffs became effective, the South Carolina Railroad Commission withdrew its Order No. 271, restoring the rates previously in effect, and almost simultaneously set down for formal hearing the matter of intrastate rates on fertilizer between points in South Carolina. There were at least three formal hearings before the South Carolina Railroad Commission in 1923, involving the fertilizer rates. The carriers by appropriate testimony and exhibits, supported the application of the Royster Scale on South Carolina intrastate traffic. Notwithstanding, the South Carolina Commission on February 11th, 1924, issued its order No. 274 and Circular No. 275, reducing the intrastate rates on fertilizer in South Carolina horizontally 12 per cent to become effective February 15th, 1924. Under the law of South Carolina, the Commission must give the carriers at least thirty days notice before making effective any reduced rates; hence the carriers did not publish the reduced rates to become effective until 30 days after they received the South Carolina Commission's Order No. 274, of March 15th, 1924. These reduced rates of 1924 are shown in Column "L".

[fol. 233] Following the decision of the Interstate Commerce Commisison in the Blackshear Case, wherein certain expressions were made by the Commission with respect to

the Royster Scale, and also following the radical reductions made by the Alabama Commission on Alabama intrastate traffic, the fertilizer interests filed a petition with the South Carolina Commission, resulting in the South Carolina Commission again citing the carriers to appear before it and show cause why further reductions should not be made in the already low rates then applicable intrastate in South Carolina, and which rates were then being contested before this Commission in a Thirteenth Section proceeding under Docket 16335. (Tes. 180-184.)

There was very little additional evidence offered at this last hearing before the South Carolina Commission; notwithstanding the South Carolina Commission undertook by its Order No. 300 of January 30th, 1925, to further reduce the South Carolina intrastate rates an additional 10 per cent. Before the reduced rates could be made effective, the carriers applied to the Federal Courts for an interlocutory injunction to prevent the enforcement of the South Carolina Railroad Commission's Order No. 300, and such an order was issued by the United States District Court for the Eastern District of South Carolina, dated April 8th, 1925, granting an injunction against the South Carolina Commission's Order No. 300, so that the rates shown in Column "M" have not in fact been made effective, but have been made enjoined by the Federal Courts. Under Column "N" is the Third Royster Scale, which is placed in the exhibit for comparative purposes.

In connection with that exhibit No. 64, if you please, a comparison of Column "H," which are the rates that became effective under the Director-General's 25 per cent increase order in 1918, and in Column "L" are the rates [fol. 234] that are at present applied in South Carolina, which is the result of the South Carolina Commission's order in 1923, you will note that the Column "L" rates are substantially the same as the June, 1918, rates, or in many instances 1 to 3 cents a ton less; notwithstanding that fact, under Column "M" are the rates which were recently ordered by the South Carolina Commission, and which have been temporarily enjoined. (Tes. 184-185.)

[fol. 235] Our present intrastate rates in South Carolina are not substantially the same as or lower than they were prior to any increases made under G. O. 28; they are sub-

stantially the same as the G. O. 28 rates, mostly one or two or three cents a ton less than the General Order No. 28 rates. My Column "H" reflects the 25% increase, and "G" shows the rates in effect prior to the 25% increase. As a matter of fact the Royster Scale at present is but a few cents higher than the So. Carolina rates in 1918 after G. O. 28. It is also true, certainly up to 110 miles, that our rates in So. Carolina today are not any higher than they were in 1890.

Exhibit 65, consisting of 3 pages, is a copy of the So. Carolina Commission's order 274, of Feb. 11, 1924. In connection with this order, I direct your attention to the first paragraph on page 2, wherein the So. Carolina commission indicates that in its judgment the loss of revenue to the carriers from the reductions made in February, 1924, would be approximately $100,000.00; the carriers have alleged that the reductions will be even greater than that. (Tes. 185-186.)

Exhibit 66 is a copy of the So. Carolina Commission's order 300 of Jan. 30, 1925, that has been temporarily enjoined by the courts. That exhibit consists of 3 pages, and you will notice that the last page, on which Circular 289 appears, is not marked.

Exhibit 67 is a copy of the order of the U. S. District Court for the Eastern District of So. Carolina, granting an interlocutory injunction in connection with So. Carolina Commission's order 300.

The So. Carolina Commission withdrew their order insofar as it affected the short lines, and they withdrew it against the joint application between the Blue Ridge and the Southern Railway; in other words, the rates on the Blue Ridge in effect under the previous order remained the same, asd as we construed the statement of the Attorney General of So. Carolina we were authorized to apply combination basis between Southern Ry. stations and Blue Ridge Ry. stations, although we have not as yet revised the rates to [fol. 236] that basis.

Exhibit 68 gives a list of articles contained in the So. Carolina Exception Sheets to the Southern Classification applicable on intrastate traffic. This list is substantially the same as the interstate list, that is insofar as the commodities actually moving in intrastate commerce in So.

Carolina are concerned. The carriers' Exhibit 8 contains many articles that are not shown in this list, but I have not been able to find anything here which is not contained in Exhibit 8. (Tes. 186-187.)

Exhibit 69 is a map of the state of So. Carolina. I have inserted on the map in red circles the interstate fertilizer shipping points shipping fertilizer and fertilizer material into the So. Carolina points. The object of that is to give a good view of the discrimination feature which has been covered in some of the previous exhibits. I have undertaken to show on this map the principal points shipping into So. Carolina that are adjacent to the state of So. Carolina. On the right of the map appears Wilmington, and of course Wilmington is shown in the margin, and is not in the exact geographical location, because there wasn't room on the map. And the map also shows Wadesboro, N. C., Charlotte, N. C., Toccoa, Ga., Atlanta, Ga., Augusta, Ga., and also Savannah, Ga., which are the principal points shipping fertilizer and fertilizer material into So. Carolina. I made an investigation for the first six months of 1923 as to the total number of cars of fertilizer and fertilizer material moving from interstate points and delivered at destinations located on the Southern Ry. in the state of So. Carolina during that period. During that period there were shipped to destinations on the Southern Ry. and delivered at Southern Ry. destinations from interstate origins, 1,530 cars of fertilizer and fertilizer material. During that period there were 3,816 cars moving intrastate in South Carolina and delivered by the Southern Ry. During the month of March, 1924, 543 cars originated at the interstate points and were delivered by the Southern Ry. at No. Carolina [fol. 237] destinations. The intrastate movement delivered at destinations located in No. Carolina on the Southern Ry. during March, 1924, was 917 cars.

Taking up now Exhibit No. 70: In connection with the information I have furnished the So. Carolina Commission as to the actual movement for the first 6 months of 1923, I have tabulated on Exhibit 70 these origin points and destination points; I have first shown the interstate points shipping into So. Carolina, and directly beneath it, I have shown the intrastate points shipping to the same destinations. The purpose of that exhibit is obvious—to show

the discrimination brought about by a reduction in the So. Carolina Commission's fertilizer rates. I know of no transportation reason or any other reason why rates between points in So. Carolina for a given distance should be on a lower basis than the rates from points just over the line in No. Carolina, into So. Carolina, or from Savannah or Augusta or Toccoa, Ga., into So. Carolina for corresponding distances. In connection with my Exhibit 17 [70] the first point appearing on the exhibit, Savannah to Abbeville, 208 miles, the rate prior to the order of the So. Carolina Commission in February, 1924, which became effective March 15, 1924, was $1.05; from Charleston to Abbeville, 235 miles, or approximately 27 miles greater in distance, the rate was $3.03; nevertheless, the So. Carolina Commission reduced that rate on March 15, 1924, to $3.37, and on March 28, 1925, they were attempting to further reduce it to $3.11. At Bamberg, S. C., from Augusta, Ga., 61 miles, prior to March 15, 1924, the Augusta rate was $2.14; but Columbia to Bamberg, 68 miles, or 7 miles difference, the rate was the same, they were on a parity, $2.14; under the South Carolina Commission's order of March 15, 1924, they reduced the rate from Columbia, S. C., to Bamberg to $1.88, and by their order of March 8, 1925, they attempted to further reduce it to $1.79. (Tes. 189-191.)

The points of origin and destination shown on exhibit 70 are points from and to which there are actual movements [fol. 238] of fertilizers. I did not find out how the volume of interstate traffic from those points into So. Carolina compared with that moving intrastate on all traffic; I gave the figures on fertilizer.

In my Exhibit 71, I have shown the rates from Wadesboro, N. C., to representative points in So. Carolina, on fertilizer and fertilizer material, compared with the So. Carolina intrastate rates and with the Royster scale. The purpose of that exhibit is to show that under the So. Carolina Commission's order of March 15, 1924, the level of the intrastate rates in So. Carolina was brought down far below the level from interstate origin shipping points.

On Exhibit 72 is shown the interstate rates from Wilmington to So. Carolina representative points, compared with the rates intrastate from Charleston and Columbia to the same destinations. Wilmington to Clio, S. C., for ex-

ample, 129 miles, prior to the So. Carolina Commission's reduction of March 15, 1924, the rate was $2.76; 126 miles from Columbia, it was $3.04; notwithstanding that the distances are comparable, the So. Carolina reduced rate makes Columbia $2.68, and the March 8, 1925, rate $2.36, against the $2.70 rate from Wilmington. To Dillon, S. C., from Wilmington, 103 miles, the rate is $2.59; from Columbia, S. C., to Dillon, 112 miles, prior to the South Carolina Commission's reduction, the rate was $2.82, and became $2.48 under the March 15th, 1924, reduction, and $2.17 under their order of March 8th, 1925, which has been temporarily enjoined. (Tes. 191-192.)

Exhibit 73 compares the rates from Charleston, S. C., and Wilmington, N. C., to points on the A. C. L. between Wilmington and Charlotte. Of course, from Charlotte to No. Carolina points, the rates are on the Royster scale, following the Commission's decision in the Charleston Steering Committee Case. Take Charleston to So. Carolina points; prior to the So. Carolina Commission's reduction of March 15, 1924, for 142 miles, you have a rate of $3.15; they reduced that rate on March 15, 1924, to $2.88. [fol. 239] I direct your particular attention to the spread between Grist, N. C., and Causey, S. C., 15 miles, 37 cents, as soon as you cross the State line. The Wilmington rates to No. Carolina points and So. Carolina points of course are on the Royster scale.

Exhibit 74 is a similar comparison, using Wadesboro, N. C., and Charleston, S. C., to stations on the Coast Line between Charleston and Wadesboro. What I said as to Exhibit 73 applies with equal force to 74.

Exhibit 75 makes comparison between Columbia, S. C., on the one hand and Wadesboro, N. C., on the other, to stations on the Seaboard between Columbia and Wadesboro. I call your particular attention to the spread in the rates as soon as you pass from No. Carolina to So. Carolina across the State line; there is Osborne, N. C., 100 miles, the present rate from Columbia is $2.82; and from Columbia to Fulton, S. C., intrastate the rate is $2.28, or a spread of 54 cents for a difference in distance of 4 miles. While from Wadesboro on the Royster scale, the spread for a similar break is about 12 cents. (Tes. 192-193.)

Exhibit 76 makes comparison between Columbia, S. C., on the one hand, and Charlotte, N. C., on the other, to stations on the Southern Ry. between Columbia and Charlotte. Cornwell, S. C., 55 miles from Columbia, has a rate at present of $1.79; Charlotte to Cornwell, 52 miles, pays $2.37; prior to the So. Carolina's Commission's reduction of February, 1924, the Columbia rate was $2.03; under the proposal here, which contemplates the application of the Royster scale to Cornwell and substantially equidistant points the rates would be the same, $1.92.

Exhibit 77 contrasts the rates from Greenville, S. C., to points on the Southern Ry. between Greenville and Charlotte, with the rates from Charlotte to the same destinations. That exhibit is similar to the exhibits that I have just analyzed.

The Royster scale was graded by the Commission from 35 miles to 500 miles, and it was extended to 600 miles in the Charleston case. After leaving 280 miles, the grada- [fol. 240] tion is in 20 mile breaks. The gradation is the same as before, except that the breaks are larger. Before reaching 280 miles, there are 10 mile breaks—under the general increases and reductions you have in some instances there under 280 miles breaks that consist of at least 20 miles there, the disposition of fractions when you increased the rates had something to do with it. That scale was designed for intrastate traffic in North Carolina originally; it is the scale that the Justice Commission appointed by the North Carolina legislature worked out. The carriers have extended the 600 miles scale which the Commission themselves prescribed as reasonable in the Charleston case and the Royster case, and used the same rate of progression for distances over 600 miles as the Commission used for distances between 500 and 600 miles, which was 25 miles; after leaving 500 miles in the Charleston case, it was 25 miles. (Tes. 193-195.)

Having in mind tankage, there would be some fertilizer materials that would move long distances under that scale. Cyanimid also. Phosphate rock doesn't take the fertilizer rates; they are on a lower basis than fertilizer. We are not proposing to put them under the same rates; the phosphate rates are not involved. Ground phosphate rock is

in the list, Exhibit 8; that would not move for longer distances. I expect to show that this scale when extended in the manner proposed is reasonable for long hauls.

Exhibit 78 contrasts the rates from Greenville, S. C., to points on the Southern Railway between Greenville and Atlanta, with the rates from Atlanta, Ga., to the same destinations. I would like to call attention to the rates to Madison, S. C., and Trigalo, Ga., the two points, one on each side of the State line, from Greenville, S. C.; as soon as you cross the State line 3 miles, you have got a spread in rate there of 36 cents on account of those intrastate rates in So. Carolina; under Atlanta, you have the same situation reflecting your Georgia intrastate rates. I have shown in Exhibit 70 the exact points shipping into So. Carolina, and you will find Atlanta to Blacksburg and to other points, [fol. 241] Atlanta to Cowpens, among other points, Atlanta is placing fertilizer into the South Carolina points. I can't say that I have developed anything to indicate that the discrepancy in rates has hindered Atlanta from shipping; we are having continual complaints from such points as Augusta and Savannah; in fact, there is pending a complaint before the Commission about the Savannah to So. Carolina rates, that involves Section 13 against the joint rates, too.

Savannah being located just across the State line in Georgia, Savannah interests have made representations to me that these reductions in So. Carolina without corresponding reductions from Savannah have just about ruined their business in So. Carolina. They have filed a formal complaint with the Commission wherein they have made those allegations. (Tes. 195-198.)

Prior to the time that the So. Carolina Commission reduced their intrastate rates on fertilizer and fertilizer material, March 15, 1925, the route of the A. C. L. and Charleston & Western Carolina Ry. from Charleston, S. C., to such points as Greenville and Spartanburg, shown in Exhibit 79, was open; that is an interstate route and that interstate route attempted to compete with the intrastate route of the Southern Ry. through Columbia to those points. Now the intrastate distance from Charleston to Greenville, for example, is 215 miles by the Southern Ry.,

that is the intrastate distance; the interstate distance by the Coast Line and the C. & W. C. is 216 miles, with a parity of rates before the So. Carolina Commission reduced their rates on March 15, 1924, at Greenwood. At Greenwood, on March 15, 1924, the interstate rate continued at $3.83, while the intrastate rate became $3.37; the carriers were not willing to extend the low So. Carolina made rates for interstate application, and therefore retired from the business via the interstate route through Yemassee and Augusta. The effect of it was to either meet the So. Carolina intrastate situation or else close the interstate route, and we preferred to close the interstate route rather than apply that low level of rates to the interstate traffic. I assisted in connection with the 13th Section application that was filed by the carriers with the Commission respect-
[fol. 242] ing the So. Carolina rates, and the statements contained in that petition are true to the best of my knowledge and belief.

Exhibit 80 shows the present and proposed rates on fertilizer from Ohio and Mississippi River crossings to points in the Carolinas. The rates shown in the exhibit apply on fertilizer, and do not include tankage; I will comment on some of these specific points to which the tankage rates are in effect less than the fertilizer rates at the present time. Originally when the rates from Ohio River crossings to points in the Carolinas were made effective they were controlled substantially by the rates from the C. F. A. territory, particularly Chicago, Ill.; the rates from Chicago to Carolina points reflecting the Virginia Cities combination, the rates from Louisville and Cincinnati were made as much less than the combination from Chicago as the lines operating from Chicago to the Ohio River demanded as their proportions; so substantially the rates from the Ohio River crossings to the Carolinas were nothing more nor less than the balance of through rates from Chicago. A complete and concise history of these Carolina rates will be found in Rates to North Carolina, 29 I. C. C., 580, State Corporation Comm. of Virginia v. C. & O. Ry., 40 I. C. C., 24; and the Spartanburg Chamber of Commerce v. Southern Ry., 34 I. C. C., 484 and 59 I. C. C., 346. (Tes. 198-200.)

I am talking about fertilizer rates. That was true of

the class rates too—they represented the balance of the through rate from Chicago, I think it was testified in 13494. Now, as to the rates from Evansville and Cairo, the general basis ever since I can remember, Evansville and Cairo to the Carolina points, has been a differential over Louisville and Cincinnati; there has been a parity of the Louisville and Cincinnati rates to the Carolinas; from St. Louis and E. St. Louis, the rates have been differentials over Evansville and Cairo. Under the proposed adjustment, we contemplate applying from Louisville, Ky., as a pivotal point, the Royster scale, and the scale which the carriers have submitted in this proceeding above 600 miles. The rates [fol. 243] from Cincinnati are to be made the same as Louisville; the rates from Evansville and Cairo are so to speak to continue to be made on a differential basis of 79 cents higher than the rates from Louisville and Cincinnati; that 79 cents is arrived at in this manner, it represents the difference in the rate based on the scale to representative points in the Carolinas; the rates from St. Louis to points in the Carolinas, it is proposed to continue on the differential basis of $1.20 a ton over the Evansville and Cairo rates. From Memphis it is proposed to apply the mileage scale. The fertilizer or fertilizer materials that move from those distant points into the Carolinas are tankage particularly, and cyanimid. Tankage moves from St. Louis, and it moves from the Ohio River crossings, and it moves from points beyond. Cairo is nothing more nor less than a basing point on traffic coming from beyond; I don't know of any fertilizer material or fertilizer that moves from Cairo; there may be a plant there that I don't know of. In the case of the Virginia cities, I have testified that we are going to break up groupings of long standing and apply the mileage basis. On domestic traffic from the ports we are going to do the same thing.

As I have stated, the relationship of Ohio River adjustment has been of long standing, and the carriers were not willing, inasmuch as they proposed to operate it on the Southeastern business, to break it up on the Carolina business. We are getting away from the relationship as to the Virginia cities on the Carolina traffic, that is true, and the only explanation I am at this time prepared to make

to you is that it represents the best judgment of the managements of these carriers, that is all. Evansville and Cairo should be grouped on this primarily to take care of the business coming from back of those points; I would say primarily because of the combination basis of rates. None of this traffic originates at Cairo proper. So far as Cairo is concerned I don't understand there will be any competition on fertilizer or fertilizer materials between Cairo and Evansville, but there would be as a basing point [fol. 244] on traffic from beyond. On a good many commodities Memphis has had a long standing relationship with the Ohio River cities on traffic in the Carolinas; practically everything. I don't recall whether that applied to fertilizers or not, but that was the equalization proposition with Memphis, and we propose to get away from that as far as fertilizer is concerned.

"Q. Well now, why are you less solicitous about Memphis here than you are about the others, you are going to destroy the combination so far as Memphis is concerned?

"A. Traffic from Central Freight Association Territory to the Carolinas don't move through Memphis, that is not the natural route."

The necessity for equalizing the through route does not exist as to Memphis, as far as Chicago and the other points that are shipping this material are concerned; that is the only explanation I can give you for maintaining the grouping at the Ohio river. If we were going to apply joint rates from the Official territory into the South the necessity for grouping the Ohio River crossings would cease to a great extent. (Tes. 200-204.)

Cyanamid comes from Niagara Falls as a rule and moves to Carolina territory through our Cincinnati route, and is also moved through the Evansville route. This proposed scale on Exhibit 80 is the Royster scale extended as shown for distances beyond 600 miles with the same rate of progression as we made in the fertilizer between 500 and 600 miles. It is not the Royster scale from Cairo; it is a differential over Louisville and Cincinnati, as I testified; I might say it is substantially the Royster scale because the differential is arrived at by taking the rates from Cairo and

Evansville on the Royster scale, as compared with Louisville on the other hand, to representative points in the Carolinas, and it gives you that 79 cents difference which is applied uniformly to all points in the Carolinas. I do not recall how much further Cairo is than Evansville to the No. Carolina points. (Tes. 204-205.)

[fol. 245] I filed an exhibit indicating that Baltimore, Md., is the largest manufacturer of fertilizer in this country. In my exhibit 81, I have compared the scale which is proposed by the carriers for application in Southern Territory with the rates which apply from Baltimore, for example, to destinations on the Pennsylvania R. R. In connection with the rates in the Trunk Line Territory, those rates are generally on the Sixth Class basis. It seems before the General Order 28 advances, the carriers in the Eastern Trunk Line territory published a good many commodity rates on fertilizer, that is to bring them into one issue, on the basis of the Sixth class rates. Now when the class rates were increased under G. O. 28 and Ex Parte 74, the Eastern lines restored the relationship as between the class rates that was disrupted by Ex Parte 74, but they did not restore the relationship as between the fertilizer rates, which were originally on the class basis. So today you will find some commodity rates on fertilizer in the Trunk Line Territory, that are a cent down to half a cent below the Sixth Class rate, or some even half a cent higher than the Sixth Class rates. In these exhibits that I am about to introduce comparing the fertilizer rates in the Trunk Line Territory, I have taken the commodity rates or the class rates, whichever were in effect. Exhibit 81, as indicated, compares the rates on fertilizer from Baltimore to Pennsylvania R. R. stations, with the rates under the Royster scale, and the rates which the carriers are proposing in this proceeding. Of course, the distances under 35 miles are the proposed carriers' rates, and are not the rates under the Royster scale, because the Commission did not prescribe any rates for 35 miles and under. These rates from Baltimore are the Sixth class rates; in some instances they are a cent and half a cent less than Sixth class, in other instances they were originally on the basis of the Sixth class rates, but the general increases disrupted the relationship, because the class rates were revised so as to bring about the relation-

ship that existed prior to Ex Parte 74 in the fertilizer rates, [fol. 246] and they were revised to that extent. (Tes. 205-207.)

Baltimore does not ship into the South, because I have made a test of the actual movement to No. Carolina and So. Carolina; I did not make any test as to the Southeastern points. There was a time when Baltimore did ship extensively into the Carolinas, but with the location of the plant at Norfolk, it discontinued that shipping into the Carolinas, and from the information I have secured from our auditor, there is generally speaking no movement of fertilizer from Baltimore into the Carolinas at present. I understand that many of the fertilizer companies which have factories throughout the South have factories at Baltimore. In accordance with the testimony in the North Carolina case before the North Carolina commission it is a fact that some of them had had factories there for about 20 years and up until recently had never filed any complaint with respect to their rates on fertilizer out of Baltimore to destinations on the Pennsylvania and B. & O. Railroads. There is a complaint pending now and I expect to refer to that later on. I have not made a thorough investigation as to fertilizer materials shipped from Baltimore into the Southeast, but I have of the Carolinas, and I find that there are practically no materials moving to the Carolinas; that is no appreciable movement to the Carolinas. I have gotten the actual movement for just one month, March.

"Q. That would be the month in which the materials would move, but there is a large movement of materials from Baltimore into the Carolinas?

"A. Not according to my information.

"Q. But according to my records, there is.

"A. That is all right, I am glad to have you testify to that."

The rates from Baltimore into the Carolinas are related to Norfolk; they were originally, as I recall it, one or two dollars a ton higher than Norfolk. (Tes. 207-209.)

[fol. 247] As to whether they are higher or lower than the Royster Scale: We have not applied a scale from points in outlying territory to points in the Southeast or the Carolinas; naturally, if you try to compare the Royster Scale

with the Baltimore rates, you are going to show substantial reductions. The Baltimore rates are higher than the scale; we do not propose any scale for application from Baltimore. As an actual fact, either now or in the past, we have not been able to move fertilizer from Baltimore to points in the Southeast on the 6th class rates, but the 6th class rates are the rates actually moving the traffic in substantial volume in Trunk Line and C. F. A. territories, and are comparable with the rates that move the traffic and which we propose to publish and expect to move it freely in the South. 6th class in Official Territory is quite a different thing from 6th class in the South; I am not comparing the two. I am taking the rates that I know move the traffic. As to whether there are a great many commodity rates from Baltimore on fertilizer: Originally the eastern lines undertook to put all their fertilizer rates in one tariff, publishing them generally speaking on 6th class basis, and along came G. O. 28 and Ex Parte 74 and disrupted the relationship as between the commodity rates and the class rates; they restored the relationship as to the class rates, and did not revise the commodity rates, so there are many commodity rates today on fertilizer from Baltimore that are either 1/2¢ or 1¢ higher than 6th class, or lower, one way or the other, but there may be some commodity or materials I don't know of lower than 6th class.

I have not an exhibit showing the comparative rate levels as — 1914, at the time the Royster Scale was prescribed, but I remember in the Royster Case, before G. O. 28 or before Ex Parte 74, we showed in that case that the rates in Trunk Line territory were higher than the Commission prescribed in the second or Third Royster case. It includes the 15 per cent advance, which was in 1915. I have no later exhibits showing the differences and spreads between the rates shown and others going back to 1914. (Tes. 209-212.) [fol. 248] Exhibit No. 82 is a comparison of the rates from Baltimore, Md., to Baltimore and Ohio Stations on fertilizer, with the rates under the Royster Scale for similar distances.

Exhibit No. 83 is a comparison of the rates on fertilizer from Philadelphia to Baltimore and Ohio Stations with the rates on the Royster Scale for similar distances.

Exhibit No. 84 is a comparison of the rates from York, Penn., to Western Maryland stations with the rates on the Royster Scale for similar distances.

There is a substantial movement of fertilizer on these rates that we are using here; I inquired of the eastern lines, and there was quite a movement.

By Commissioner Eastman:

"Q. This is practically a duplication of what Mr. Menzies filed yesterday, except you have the specific points and rates in it, and he had a scale.

"A. I don't recall him having shown a scale in the Trunk Line Territory, because I know of none." (Tes. 212-213.)

He showed a scale for the Central Freight Association Territory, as I recall it.

Exhibit No. 85 is a comparison of the rates on fertilizer from York, Penn., to Pennsylvania Railroad stations, with the rates under the Royster Scale for similar distances.

For distances under thirty miles—for that distance—we have taken the Royster Scale or the North Carolina intrastate rates, or the rates that we are proposing in this proceeding.

Exhibit No. 86 is a comparison of the rates on fertilizer from Hagerstown, Md., to Baltimore & Ohio Railroad stations, with the rates on the Royster Scale for similar distances.

Exhibit No. 87 is a comparison of the rates on fertilizer from Syracuse, N. Y., to New York Central Railroad stations with the rates on the Royster Scale for similar distances.

[fol. 249] I have made some investigation as to the movement of fertilizer from Baltimore by the Western Maryland Railway to Eastern Trunk Line Territory, and have shown in my Exhibit No. 88 the points to which Baltimore has been shipping by the Western Maryland to Trunk Line points, and compared their rates with the rates on the Royster Scale for similar distances. I invite your attention to a summary shown on Page 2. On Page 2 of the exhibit is a tabulation of the actual movement for the month of April, 1924 from Baltimore to stations in the Trunk Line Terri-

tory via the Western Maryland Railway, as secured from Witness McCawley's Exhibit No. 36 in Docket 15912. The total weight to this territory for the month of April being 2,434,531 pounds; the average revenue per car mile 30.87 cents; the average rate 26.6 cents; the average haul 679 miles. Now, for 379 miles under the joint haul scale, Royster Scale, would be 24.8 cents, against the 26.6 cents from Baltimore to Trunk Line Territory; the car mile earnings under the joint Royster Scale for 379 miles based on the average loading here, would be 28.8 cents.

"Commissioner Eastman: I was mistaken about these Menzies exhibits; they show scales in the Official Territory only in C. F. A. on the Chesapeake & Ohio Railway and in the states intrastate." (Tes. 213-215.)

My Exhibit No. 89 is a comparison of the Norfolk & Western Railway scale Western Division with the Royster Scale.

My Exhibit No. 90 is a comparison of the Norfolk & Western Railway scales Eastern Division with the Royster Scale. Scale B shown on that Exhibit is the Norfolk & Western Railway's intrastate Virginia Scale.

My Exhibit No. 91 is a comparison of the Chesapeake & Ohio Railway scales with the rates under the Royster Scale. I have developed that from Norfolk and Lynchburg in con- [fol. 250] nection with the Chesapeake & Ohio Railway and the rates shown in this exhibit, there were 2,321 tons moving in the early part of 1924.

I don't understand that those Chesapeake & Ohio rates are in issue. I would imagine that if we were going to change our rates in Virginia throughout all Virginia to the Royster Basis, it would be difficult for the Chesapeake & Ohio Railway not to do the same. We have that same situation on brick, where the Commission gave the Eastern lines a higher basis than they gave the Southern lines on account of the equalization of revenue rule. Now, that question is before the Virginia Commission, the Chesapeake & Ohio Railway is trying to get the Virginia Commission to approve the rates which you prescribed for them on interstate traffic, and naturally we had to go with them and get them to approve the rates you prescribed for us on inter-

state traffic, so we are just in a mess on account of that I. & S. 1885.

Exhibit No. 92 is a comparison of the rates on fertilizer from Boston to Boston & Maine Railroad stations, with the Royster Scale.

"Commissioner Eastman: That probably accounts for the bad state of agriculture in New England.

"Mr. Gardner: They seem to be successful in maintaining a more reasonable level of rates than we are." (Tes. 215-216.)

By Mr. Burr:

"Q. What do they fertilize along the Boston & Maine?

"A. There are plenty of potatoes up there somewhere.

"Commissioner Eastman: That is further north yet."

Maine consumed in 1923 160,000 tons; in 1924, they consumed 182,000 tons of fertilizer; Florida consumed 365,000 tons; Maine consumed approximately 50 per cent.

[fol. 251] There is a fertilizer factory at Boston, and my information is that they are shipping fertilizer to this territory. They raise tobacco up there in some of this territory, very high class wrappers.

Exhibit No. 93 is a comparison of rates on fertilizers from Middletown, Conn., to New Haven stations, with the Royster Scale.

Exhibit No. 94 is a comparison of the rates on fertilizer from New Haven to New Haven stations, with the rates on the Royster Scale.

Exhibit No. 95 is a comparison of the rates on fertilizer from Waterbury, Conn., to New Haven stations, with rates on the Royster Scale.

Passing to a somewhat different territory in my comparisons, that is the Central Freight Association territory, certain of the shippers in that territory have attacked the rates on fertilizer in a formal complaint before the Commission. That particular complaint was filed by the Ohio Farm Bureau Federation, who represent, if I recall the record in that case, some 35,000 farmers.

Exhibit No. 96 compares the rates which we are proposing in the Southern Territory, as compared with the rates

that the farmers in that territory are asking for; it shows first, the Royster Scale; it shows second, the present C. F. A. Scale; it shows third, 80 per cent of the Sixth Class rates, which is the basis that has been requested by the farming interests in Ohio in Docket 15912. (Tes. 216-218.)

It is only fair to say that after the farming interests in those states filed their complaint, the fertilizer interests in that territory wanted rates a little bit lower than the farming interests asked for, and they have a complaint [fol. 252] pending before the Commission. The farming interests, as indicated, asked for 80 per cent of the Sixth Class on fertilizer, and the fertilizer manufacturers have now asked for 75 per cent of Sixth Class.

When you go beyond 130 miles, the rates that the farmers are asking in C. F. A. Territory are below the Royster Scale. But I think it correct that in our territory, as stated by Mr. Menzies, the average movement here is for approximately, in Southern Territory, 100 miles somewhere.

My Exhibit No. 97 shows the rates from Baltimore, Md., to C. F. A. points, contrasted with what the rates would be under the Royster Scale. Now, the destination points shown in this exhibit are points to which there was an actual movement during the spring of 1924, and the destination points were taken from Witness McCawley's exhibit in Docket 15912. I make that explanation to show that there is a substantial movement in that territory.

Exhibit No. 98 contrasts the Royster Scale with the Ohio intrastate scale. Of course, the Ohio intrastate scale is under attack jointly in the proceeding 15912, as I understand it, and according to the record, the Ohio Commission with a representative of the Interstate Commerce Commission heard the case jointly; so those rates are really under attack. But look if you please, at the relationship of the Ohio present rates with the Royster Scale.

Exhibit No. 99 is merely a recapitulation of Witness Hunter's Exhibit No. 17 in Docket 15912, showing the actual movement of fertilizer from St. Bernard, Columbus, Cleveland, Ivorydale, Sandusky, Toledo, Middletown, Dayton and Girard, Ohio, to Ohio destinations; and for the year 1923 the average miles hauled was 113 miles and the average weighted rate is 16.3 cents for 113 miles. Under the Royster Scale, the rate would be 13½ cents. The

average earnings per car mile was 56.8 cents, and under the [fol. 253] Royster Scale, it would be 51.8 cents. The average earning per ton mile was 28.8 mills, and under the Royster Scale it would be 23.8 mills. There were 414 cars moving, it will be noted. (Tes. 218-220.)

My Exhibit No. 100 gives the actual movement from Lockland, Ohio, to Official Classification Territory, as shown in Witness Hunter's Exhibit No. 16 in Docket 15912. The combined inter and intrastate movement, you will note, and the average miles hauled was 145 miles; the average weighted rate was 17.9 cents; under the Royster Scale, it would have been 14.7 cents; for 145 miles, the average earnings per car mile was 51.2 cents, and under the Royster Scale for 145 miles it would have been 44.9 cents; the average earning per ton mile was 24.7 mills, and under the Royster Scale it would have been 20.2 mills. It might be well there to compare that rate of 17.9 cents for 145 miles, under the C. F. A. Scale, the C. F. A. Scale for 145 miles would have been 18 cents, the rate charged was 17.9 cents, pretty close. On interstate traffic, the average miles hauled was 133 miles, the average weighted rate was 16.8 cents, while on the Royster Scale it would have been 14.1 cents; the average earning per car mile was 52 cents, and under the Royster Scale it would have been 46.3 cents; the average earning per car mile was 25.3 mills, and under the Royster Scale it would have been 21.2 mills. Intrastate, 967 cars, average miles hauled 152 miles; average weighted rate 18.5 cents, under the Royster Scale 15.8 cents; average earning per car mile 50.6 cents, under the Royster Scale it would have been 45.3 cents. Average earnings per ton per mile 24.5 mills, and under the Royster Scale it would have been 20.7 mills.

My Exhibit No. 101 gives a recapitulation of the movement from Ohio points to Official Classification Territory, to some of the points shown in Exhibit 100. The recapitulation was taken from Witness Hunter's exhibit No. 18 in Docket 15912. For the 700 cars, the average mile haul was 187 miles; the average weighted rate 18.2 cents, under [fol. 254] the Royster Scale it would have been 17.4 cents; average earnings per car mile 40.4 cents, under the Royster Scale it would have been 39.6 cents; average earning per

ton mile 19.4 mills, under the Royster Scale it would have been 17.4 mills.

My Exhibit No. 102 shows the actual movement from Baltimore, Md., to Ohio points as listed in Witness McCawley's Exhibit No. 34, Docket 15912, and contrasts the rates with the rates that would accrue under the Royster Scale. (Tes. 220-222.)

My Exhibit No. 103 is simply excerpts from the decisions of the Commission where they have had something to say with respect to the conditions, transporation conditions in the Southern Territory, as compared with the territory north of the River. There is one recent decision that I have not added to the list of those contained in that exhibit, and that is the Commission's decision in the Chattanooga Manufacturers Association Case, 96 I. C. C., 481, decided March 10th, 1925, where at Page 482, the Commission states: "Owing to the greater traffic density and of population north of the Ohio River than south thereof, the rates over the lines north of the River have always been on a lower level than over those in the Southern Territory."

Concerning whether I am prepared to say that that is true as to the commodity rates: We have some commodity rates in the Southern Territory that are lower than the rates in the Trunk Line and C. F. A. Territories, competitive situations have brought those about; it is probable that there will be some suggestion offered in Docket 17000 respecting the nature of those commodities.

Comparing the rates on lime in Southern Territory with the rates on lime in C. F. A. Territory; the rates in the Southern Territory on lime are less than the rates which the Commission prescribed for application in C. F. A. Territory. Now, in connection with that lime situation, the [fol. 253] competitive conditions in the South are similar to those surrounding the brick adjustment, that has been referred to in I. & S. 1885. The carriers are proposing to revise the lime rates in the South, but we can't hope to put them up where they belong on account of the competitive situation.

I am afraid I can't answer that our coal rates are often lower in the Southern Territory than they are north; I handle very few coal adjustments.

"Q. Mr. Powell testified in the Eastern Class Rate Case that in many cases they were lower in the South.

"A. I am unable to say."

The citation to that last case I quoted is 96 I. C. C., 481. I did not participate in that case. I am not familiar with the record in any respect; all I am interested in is what the Commission said.

"Q. You don't know whether or not the foundation for that statement was simply previous statements of like effect in earlier cases, without any reexamination of the present conditions?

"A. I can't tell, Mr. Cotterill, what was in the minds of the Commission when they made that expression, the facts I presume."

In so far as the South is concerned, where we carry rates in Southern Territory as to certain commodities that are lower, it is a situation somewhat like the brick case; we have gone a great deal lower on some commodities than we feel like we could have been required to go when it came to prescribing maximum reasonable rates; if we went that low on all commodities, we would have a bunch of receivers in the Southern Territory. It is just like the situation in the Brick Case, the Commission put our rates on brick in that case, under that so-called equalization proposition, they put us lower on brick in the Southern Territory than they [fol. 256] did in the Central Freight Association. Like Commissioner Eastman, we think it was a mistake; we proposed higher rates. (Tes. 222-224.)

Concerning whether there is a tendency to compare rate levels in the different territories on the basis of the prevailing class rates, rather than the commodity rates, and that that comparison is somewhat misleading: I don't think I can answer that proposition, because I did not take part in 13494 actively, nor in the Eastern Class Rate Case, and I don't know exactly what comparisons they made.

By Mr. Quirk:

"Q. Mr. Gardner, haven't you as a witness, and haven't the railroad witnesses quite generally stated very frequently

that comparisons of this kind are worthless when made by the shippers?

"A. I don't recall any statement of that kind."

I think myself in any comparison, you have got to have the circumstances under which those rates were published; take in the Southern Territory, our fertilizer rates, as I have shown, have been continually hammered down, especially in connection with situations over which we had no control. Now, in the Trunk Line Territory, I don't understand that that is correct, they haven't had the same situation in that territory as we have had in our territory, and of course that is one feature that we take into consideration. I think myself you have got to consider the conditions under which the rates were established.

As to whether I ever studied the conditions under which the class rates in Official Territory were established: I have read some of the cases, particularly the citations in the Bluefield cases and the Wilmington Traffic Association Cases and the Charlotte Cases, the North Carolina Corporation Commission cases; from a competitive adjustment, that is true.

[fol. 257] I have shown certain comparisons of the rates in Southern Territory and the rates that we are proposing, as compared with the rates in the territory just north of the river. The consumption of fertilizer in the states of Ohio, Indiana, Maryland and West Virginia is far greater than the consumption of fertilizer in that limited portion of the Southwestern territory just west of the Mississippi River; my Exhibits 35 and 43 show that very clearly. Notwithstanding that situation, our friends of the fertilizer interest have insisted on, in appearing before the various State Commissions, and submitting their proposed scales, that the sole guide should be the rates prescribed by the Commission in that limited portion of the Southwestern Territory covered by Docket 9702. (Tes. 225-227.)

I have something to say with respect to that situation and the scale prescribed in Docket No. 9702, and the circumstances under which that scale that they offered the Commission as a standard for measuring these rates, was prescribed. In various proceedings before the State Commissions, the fertilizer shippers have repeatedly advanced as

a reason for a reduction of fertilizer rates in the Southern Territory, the fact that the Interstate Commerce Commission in the Memphis-Southwestern Case, Docket No. 9702, 77 I. C. C., 473, had prescribed certain rates on fertilizer for application in the limited territory just west of the Mississippi River. The contention of the fertilizer shippers has been in those state proceedings, that rates made somewhat less than the 9702 fertilizer rates would be reasonable for application in the Southern Territory. This contention was made before the Alabama Commission, and as justification for the reduced rates prescribed by the Alabama Commission, it is specifically stated in their report. This is the report of the Alabama Commission. And after that report came out, the fertilizer interests appeared be- [fol. 258] fore the North Carolina Commission and advocated the scale of the Alabama Commission, which was different from the scale they had previously submitted to the South Carolina Commission. They have pointed to the scale prescribed by the Alabama Commission up to this time before the State Commission as being the sole standard for the rates that they are proposing. That being true, I will state what the Alabama Commission said as to the basis for arriving at the scale which they prescribed: "We believe that a just and reasonable scale of rates may be constructed by observing the Memphis-Southwestern Scale as a guide but using a somewhat lower level which we believe is justified and changing the gradation slightly to conform more nearly to our method of balancing the scales and distributing the burden of transportation.

Thus the Alabama Commission indicates that the Memphis-Southwestern Scale was their guide in reducing the Alabama rates. The fertilizer interests also endeavored to have the North Carolina Commission reduce the North Carolina rates because of the 9702 Scale; however, the North Carolina Commission has not made any reductions in the intrastate rates in North Carolina, which rates continue on basis of the Royster Scale.

The reasons advanced in the hearing before the South Carolina Commission for reducing the rates intrastate in that State were also the rates which were prescribed by this Commission in Docket 9702. At the last hearing before the South Carolina Commission, at Page 32 of the

Transcript, the counsel for the complainants, in addressing the South Carolina Railroad Commission, stated:

"Now, we are not asking you to make a further reduction in South Carolina simply because the Interstate Commerce Commission has explained away the significance of the Royster Scale. We are going back to our original position, taken on the original record, and now forming a part of this record, that on basis of comparative rate [fol. 259] levels—the only test thus far the ingenuity of man has perceived—on the basis of comparative rate levels we contend now, as in the beginning, that the rate level west of the Mississippi River constitutes a fairer basis for the fixation of rates than the Royster Scale in this territory."

"Mr. McGehee: Is that the position of the fertilizer interests in this case?

"Mr. Cotterill: Yes."

Page 98 of the Record.

"Mr. McGehee: They predicate their whole case on the Memphis-Southwestern Case and he attaches great importance to it.

"Mr. Cotterill: I stand committed to it."

Obviously the reductions brought about in the various intrastate rates were predicated on the Memphis-Southwestern Case, prompted by the expression of this Commission in the Blackshear Case that the Royster Scale was not prescribed for final measure of rates to apply generally throughout the Southeastern Territory on fertilizer. It is with this situation confronting us that I have made a study of the 9702 Scale prescribed by the Commission and wish in this proceeding to explain the situation as I have found it. (Tes. 227-230.)

The rates on fertilizer in the Southwestern Territory, as the records of the Commission in the Virginia-Carolina Chemical Company Case, 16 I. C. C. 49, will show, were originally established. (Quoting from the Commission's Record:)

"For the purpose of enabling the Caddo Company to do 'missionary work,' that is, to build up its business in that

territory by bringing the farmers to a realization of the benefits to accrue from the use of that product."

Although low rates were established by the Southwestern lines to apply on fertilizer, the same rates were not published [fol. 260] nor authorized to apply on such articles as cottonseed meal and nitrate of soda. The tonnage of the Southwestern lines on cottonseed meal being substantial, there was no necessity, as the records will show, for unduly low rates to encourage the use of that commodity. In the Shreveport Case, 48 I. C. C. 312 and 41 I. C. C. 83, the Southwestern carriers did agree, as a means of removing discrimination against Shreveport, to apply on fertilizer from Shreveport to Texas points the same rates as were contemporaneously maintained in Texas under the order of the Texas Commission. They did not, however, agree to apply the fertilizer rates on cottonseed meal or nitrate of soda, the tonnage on cottonseed meal being substantial. Rates higher than the fertilizer rates were approved by this Commission on these commodities.

With the exception of the Virginia-Carolina Chemical Company Case, Docket 2617, reported in Volume 18 I. C. C. 1, I have been unable to locate any decision of this Commission where reasonable per se rates on fertilizer have been prescribed for the Southeastern Territory. It appears that in the Southwest, the cases involving fertilizer rates were of a discriminatory nature and very little consideration was given to the actual per se measure of the rates. The rates in the Virginia-Carolina Chemical Company Case brought up to date are in fact higher than the Royster Scale.

The rates fixed by the Commission in the Memphis-Southwestern Investigation, Docket 9702, were not prescribed as maximum reasonable rates, but were designed for the purpose of removing discriminations, Fourth Section departures and other inconsistencies in the former adjustment, and to preserve to the Southwestern carriers their aggregate revenues. Moreover, the rates fixed by the Commission in the Memphis-Southwestern Case were not prescribed [fol. 261] for general application in the Southwestern Territory. These rates applied only in Louisiana, Arkansas,

and Missouri. In fact, the rates on fertilizer in other portions of the Southwest are today higher than the 9702 scale.

In my Exhibit No. 104, there are quoted excerpts from Pages 500 and 501 of the Commission's report in the Memphis-Southwestern Case substantiating my statement that these rates were not prescribed as maximum reasonable rates. In this exhibit are also quoted excerpts from the various decisions of this Commission in connection with cases which were the outgrowth of the Memphis-Southwestern Case. (Tes. 230-232.)

Particular attention is directed to the quotation from Page 501 of the report of this Commission in the Memphis-Southwestern Case, wherein the Commission specifically states that the finding in Docket 9702 was without prejudice to whatever decision they may reach in connection with Docket 13535, the Corporation Commission of Oklahoma Case, which was then pending before the Commission.

In my Exhibit No. 105, is a comparison of the Royster Scale with the fertilizer rates prescribed by the Commission in Docket 9702; and also with the cottonseed meal rates prescribed in Docket 9702, and the average of the fertilizer and cottonseed meal rates. It also compares the rates prescribed by the Commission in Docket 9702 on fertilizer and cottonseed meal, with the rates prescribed by the Commission on junk and scrap iron in the same case. It also shows the scale of rates which Attorney-Examiner Disque of the Interstate Commerce Commission recommends to be adopted for application on fertilizer in the Southwest.

Right in that connection the Alabama Commission used the Memphis-Southwestern Case as its guide in prescribing its rates for intrastate application in Alabama. The ferti- [fol. 262] lizer interests in the various hearings before the state Commissions have adopted that same scale. It is perfectly apparent that the Alabama Commission in using that standard, assumed that that was the Interstate Commerce Commission's idea of a reasonable scale in Southwestern Territory. Since that case the entire situation has been reopened on the fertilizer rates,—not in that limited portion of the Southwestern Territory,—but as to the entire fertilizer situation, and is again before the Commission on a reopened record—that is the Consolidated Southwestern Cases.

After extensive hearings in that case Attorney-Examiner Disque has made his recommendations as to what would be reasonable on fertilizer in the Southwestern Territory, while of course it is not binding, and of no final effect, it does show his idea as to what reasonable rates on fertilizer in the Southwest would be.

I know that the hearing in which Exam. Disque made his scale contained evidence about the fertilizer rates; it was offered I think by Mr. Johnson of the western lines—Mr. Johanson of the western lines, the Rock Island. The shippers were there; there was something said about fertilizer by a shipper, I don't recall who it was.

"Mr. Gwathmey: I personally attended the hearing, and it was largely attended by representatives of the shippers.

"Mr. Quirk: I understand the petition for rehearing has been granted by the Commission on a showing that the shippers were not properly represented, or at least did not take active part in that case, they did not appreciate what was going to happen, I mean, they did not take an active part.

"Commissioner Eastman: You mean that a petition for rehearing has been granted?

"Mr. Quirk: I understand it has.

[fol. 263] "Commissioner Eastman: I don't recall that." (Tes. 232-235.)

Inasmuch as that question has been asked, I want to say I made an examination of the record in Docket No. 9702, as to the evidence with respect to fertilizer, and the entire evidence in Docket No. 9702 with respect to fertilizer, was very meager; the main testimony in that case for the fertilizer interests was given by Mr. Bosley of the Virginia-Carolina Chemical Company, and pertained particularly to the long haul rates, as I recall it:

Since Mr. Disque's report came out in the Consolidated Southwestern Case, the Commission has issued an order in what is known as the Arkansas Fertilizer Case, in which they extended the 9702 scale from Little Rock into points in Oklahoma and into Texas, and they specifically stated in the order in that case that their finding in the Arkansas Case was without prejudice to any finding that they may make in the Consolidated Southwestern Case, the same as they did in 9702.

"Q. Yes, and isn't that qualification, if you may term it so, also injected into each and every decision, into each and every specific decision of the Commission in deciding southwestern cases since the Consolidated Southwestern Case was heard?

"A. Naturally, when the Commission has a general situation before them, they don't want to bind themselves on any one particular commodity.

"Mr. Roberts: It was not specifically applied to fertilizer cases."

It will be observed from this exhibit that unlike the rates on fertilizer in the South the Southwestern Scale on cottonseed meal is substantially higher than the rates prescribed for fertilizer. In the Southern Territory, the cottonseed meal is on the fertilizer basis. The average of the fertilizer and cottonseed meal rates prescribed by the Com- [fol. 264] mission in Docket 9702 for distances over 10 miles and under 110 miles is substantially the same as the Royster Scale, while for distances over 110 miles the average of the fertilizer and cottonseed meal rates prescribed in 9702 is substantially higher than the Royster Scale. The rates on junk and scrap iron prescribed in 9702 are on a higher basis than the rates prescribed in that proceeding on fertilizer. The fertilizer rates did not apply on nitrate of soda.

In my Exhibit No. 106, I have compared the Oklahoma-Texas Scale published in Agent Leland's Tariff I. C. C. 1590, applicable on fertilizer, and does not include cottonseed meal or nitrate of soda, with the 9702 scale, and with the Royster Scale, both single line and joint line. (Tes. 235-237.)

In my exhibit No. 107, I have compared the Texas intrastate rates published in Agent Fonda's Tariff I. C. C. 174, single line and joint line, with the 9702 scale, and with the Royster Scale. The rates under the Texas Scale did not apply on nitrate of soda or on cottonseed meal; higher rates prevail on those commodities.

In Exhibit No. 105, the last page is shown on Page 2; in fact it should be Page 3.

In my Exhibit No. 109, I contrast the rates recently prescribed by the Interstate Commerce Commission on nitrate

of soda for application from New Orleans, La., to Arkansas points in the New Orleans Joint Traffic Bureau Case, 89 I. C. C., 223, with the rates on fertilizer under the 9702 scale and the rates on fertilizer under the Royster Scale. You will note that throughout the nitrate of soda rates that the Commission prescribed as being reasonable for that Western Territory are substantially higher than either the 9702 scale or the Royster Scale on fertilizer.

[fol. 265] In my Exhibit No. 110 there is an excerpt from Attorney-Examiner Disque's tentative report in the Consolidated Southwestern cases, dealing with the matter of fertilizer.

In my Exhibit No. 111, I have reconstructed the rates prescribed by the Commission in the Blackshear case, by observing the same differentials over and under the 9702 scale that was reflected in the rates that the Commission itself prescribed, and used that basis of reconstructing the scale under the rates recommended by Attorney-Examiner Disque.

In my Exhibit No. 112, I have tabulated from the preliminary abstracts of the Commission, the fertilizer tonnage, which includes fertilizer material also, transported and originated by the three districts in the United States, the Southern, the Eastern and the Western Districts. Of course, the western District as I understand it includes the territory, the Western Trunk Line Territory and the entire West, and not only the Southwestern Territory. I call attention to the tonnage originated figures for the year 1923; the Southern territory, of fertilizer and fertilizer materials originated, amounted to 1.61 per cent of the total tonnage; the Eastern Territory, .46 per cent; the Western Territory, .20 per cent. That .20 per cent does not include the cottonseed and meal cottonseed products.

In my Exhibit No. 113, I contrast the rates, the car mile earnings and the per car earnings on fertilizer, under the Royster Scale, based on the average loading of 23 tons, which was the average loading of the Southern Railway for the year 1923, with the rates on slag and stone, as prescribed by the Commission in the Duquesne Slag Case, 92 I. C. C., 554, using the average loading for slag as referred to by the Commission in their decision. I also ask atten-

tion to the excerpts from the decision shown at the end of the exhibit. (Tes. 237-239.)

[fol. 266] In my Exhibit No. 114, I show the rate, per car revenue, and per car mile revenue, on fertilizer, based on the average loading of 23 tons, as contrasted with the intrastate rates on stone between points in South Carolina. Although for distances over 100 miles, or in fact the stone per car earning approximate very closely the earnings under the Royster Scale on fertilizer with an average loading of 23 tons.

I don't know that, in view of the heavy loading of crushed stone, if you make your comparison on a per car basis or a per car mile basis, you can show that the rates on crushed stone are relatively higher than the rates on a great many commodities of much higher grade from a traffic standpoint, because those stone rates are ridiculously low, and they are made low on account of that loading. It is true that we do not make our rates on fertilizer with relation to stone, but it occurred to me that a comparison of that kind would be at least persuasive that the Royster Scale was not too high.

"Q. Well, I had in mind a comparison in a case that I was looking over the other day, where sand rates in Central Territory were compared with the rates on a great many different articles, and it showed that on the per car mile or per car basis, the sand rates were a good deal higher than the other rates; that was largely due to the heavy loading; if you put this stone comparison that you have got in your Exhibit 114 on a per ton mile basis, you would get an entirely different result, wouldn't you?

"A. That is correct, yes sir." (Tes. 239-240.)

Exhibit No. 115 is a comparison of the Southern Railway's Carolina Lumber Scale applicable between points in Carolina Territory east of Atlanta, with the rates under the Royster Scale on Fertilizer. On lumber, the average loading is slightly in excess of that of fertilizer.

[fol. 267] My Exhibit No. 116 is a comparison of the specific commodity rates from South Carolina points to North Carolina points on lumber, with the rates for similar distances under the Royster Scale on fertilizer.

Exhibit No. 117 is a comparison of the rates on lumber from Carolina points to the Virginia Cities, with rates on fertilizer for comparable distances.

Exhibit No. 118 compares the rates, per car revenue and per car mile revenue, on sulphuric acid from Copperhill, Tenn., to southern points, with the rates, per car mile and per car revenue that would accrue using the Royster Scale for similar distances. (Tes. 240-241.)

The loading of sulphuric acid is shown on Page 3; the average loading on sulphuric acid was 48 tons. I also call attention to an excerpt from the Commission's decision in the Copperhill Case, where a good many of these rates were fixed.

Exhibit No. 119 is a similar comparison, only using Grasselli, Ala., as a point of origin.

Exhibit No. 120 is a comparison of the rates on asphalt from South Atlantic and Gulf Ports, showing the rate, revenue per car and per car mile, and what the revenue would be on fertilizer for similar distances, based on an average loading of 35 tons on asphalt and 23 tons on fertilizer.

Exhibit No. 121 is a comparison of the rates, the per car revenue and per car mile earnings on roofing slate from Ohio River Crossings to southern points, with the rates on fertilizer and the earnings on fertilizer for comparable distances; the roofing slate earnings being based on 49,000 pounds, and fertilizer on 46,000 pounds. There is a typographical error in that average loading of fertilizer; strike off the last zero there. Now, there is quite a movement of salt in carload quantities from Norfolk, Va., to Carolina [fol. 268] points, it is imported salt, brought in from the Mediterranean ports and reshipped from Norfolk to Carolina points. In Exhibit No. 122, I have contrasted the rates on salt from Norfolk to Carolina points, the per car revenue and the car mile revenue, with the rates on fertilizer for similar distances; the salt loading being 48,000 pounds and the fertilizer loading 46,000 pounds. According to a report of the Commission in the recent salt case, the value of salt is from four to six dollars per ton.

My Exhibit No. 123 compares the rates, revenue per car and revenue per car mile, on petroleum from the Ohio

River and South Atlantic Ports to southern points, with the rates, revenue and per car mile earnings on fertilizer for similar distances; the average loading of petroleum being 60,000 pounds, and fertilizer 46,000 pounds, that being the average loading on the Southern Railway for the year 1923.

Exhibit No. 124 contrasts the rates, revenue per car and per car mile under the Royster Scale, with the rates which the Commission prescribed on cement for application in C. F. A. Territory; the cement average loading being 40 tons, as referred to by the Commission in the Atlas Case, 81 I. C. C., 1.

Exhibit No. 125 is a comparison of the rate, per car and per car mile earnings on fertilizer under the Royster Scale, with the rates on cement intrastate in North Carolina. Those cement rates in North Carolina were recently approved by the North Carolina Commission, and are in fact the rates which the Southern Carriers are today proposing for application uniformly throughout the Southern Territory. (Tes. 241-243.)

There is a case pending dealing with that.

Exhibit No. 126 is a comparison of the rates, the per car revenue and the per car mile revenue on wall plaster from Norfolk, Va., to Carolina points, with what the rates, per car revenue and per car mile revenue would be under the [fol. 269] Royster Scale; the average loading on plaster being 52,000 pounds, and on fertilizer 46,000 pounds. You will notice Page 3 of the exhibit shows cement instead of fertilizer.

Exhibit No. 127 is a comparison of the rates, per car revenue and per car mile revenue on coal under the various rates fixed by this Commission, with the rates that would accrue on fertilizer for similar distances. I have used an average loading of 50 tons for coal and 23 tons for fertilizer.

Exhibit No. 128 is a comparison of the rates recently prescribed by the Commission for application on animal manure from Perth and Lovelock, Nev., to eastbound transcontinental territory. I call particular attention to the expression of the Commission at Page 511 of the report which is reproduced at the foot of this exhibit. For 1,412 miles, the Commission ordered a rate producing 3.4 mills per

ton mile, and 25.2 cents per car mile; the average loading of manure being 60,000 pounds, and on fertilizer it would be 22 tons. You will notice under the Royster Scale, shown just at the right of the exhibit, for a joint haul of 500 miles, the Royster Scale would be $5.74, ton mile earnings 11.5 mills, car mile earnings 26.4 cents; while for 600 miles, the rate under the joint Royster Scale would be $6.30, 10½ mills per ton mile, and 24.1 cents per car mile.

"Commissioner Eastman: You ought to quote from Commissioner Hall's descending [dissenting] opinion in that case.

"Mr. Gardner: Yes sir, I have got another exhibit that follows, that substantiates what Commissiontr Hall said."

The rates shown in my Exhibit No. 128, according to the Commission's decision, were arrived at by extending the manure scale which the Commission had prescribed for application from Nevada to the California orchards in 95 I. C. C., 430, and 73 I. C. C., 496, which has been shown in my [fol. 270] Exhibit No. 129. I have taken that scale which the Commission extended to find a reasonable rate for manure moving to eastbound transcontinental territory, and compared that with the Royster Scale. Take the single line manure scale, if you please, for 775 miles, the rate is $7.18, mils per ton mile 9.2; and turn over to Page No. 2, and look at the 975 miles per ton mile earnings, and I think Commissioner Halls' dissent in that case, to the effect that the joint haul rates were ridiculously low is pretty well supported. The Commission recently, on April 25th, 1925, handed down a decision in the Jones-Laughlin Steel Corporation Case, Docket 15110, in connection with which they prescribed a mileage scale for application on manufactured iron between points in Central Freight Association Territory. I have taken that scale which the Commission prescribed, and contrasted it with the Southern Carriers' proposed fertilizer scale, earnings per car and earnings per car mile. The average loading of manufactured iron, as indicated in the report of the Commission, which is a mimeograph report, was 30 tons, and the average loading of fertilizer, 23. I ask attention to the difference in the per car mile earnings, the car mile earnings on the iron being substantially 100 per cent greater than under the Royster Scale.

By Commissioner Eastman:

"Q. Well now, if a shipper puts in a comparison like that, don't you think Mr. McGehee would refer to it rather caustically in his brief?

"Mr. McGehee: If it hurt me, I would."

Being a mileage scale it prompted me in making that comparison, having a mileage scale in C. F. A. Territory was something unique, the Fifth Class basis having applied for so many years, that is what prompted me in making that comparison. It is offered for what it is worth. (Tes. 243-246.)

Exhibit No. 131 is an excerpt from various decisions of the Commission wherein they have commented on the value [fol. 271] of per car mile earnings. Although the carriers' proposal contemplates, at least at present, the application of the same rates on cottonseed meal as on fertilizer, I thought probably the Commission would like to have some information as to the values of these two commodities, probably it might not agree with our proposal, so I secured from the Handbook of the Department of Agriculture, the values of bran and cottonseed meal, both being feeds, from 1910 to and including 1923, and I show them in my Exhibit No. 132. In that connection, it may be interesting to note that, according to the government statistics, compiled in 1914 for the United States as a whole, that 65 per cent of the cottonseed meal was then being used for feed purposes; now, since 1919, the Government Departments tell me they have kept no separate statistics as to the amount of cottonseed meal consumed by the fertilizer industries, but in their 1914 census of the United States manufactures and of 1919, it shows the fertilizer industry in 1914 consumed 325,234 tons of cottonseed meal, and in 1919, 230,526 tons. I do know from personal investigation that the consumption of cottonseed meal for fertilizer purposes is gradually decreasing.

By Mr. Tench:

"Q. Mr. Gardner, that report does not take into consideration, does it, the number of cars of cottonseed meal that are shipped by the farmers direct, that undertakes to take in the manufacturers' reports.

"A. Used by manufacturers.

"Q. Yes; that does not as a fact cover the whole situation by any means?

"A. No, as I stated, it is the manufacturers. Exhibit No. 133 gives the prices of cottonseed meal at the various markets during the year 1923.

"Exhibit No. 134 gives the price at Memphis." (Tes. 246-247.)

[fol. 272] It is my opinion that cotton is about one of the outstanding commodities that the carriers have to transport at a very great expense; taking into consideration the floating of one or two bales into the compress, and the service that we have to perform at the compress point, and things of that kind, I think cotton is one of the most expensive commodities that we have to handle. I think it is greater than on fertilizer.

The movement of fertilizer being seasonal and owing to the fact that the principal manufacturing plants and shipping points are located at terminals where our outbound business is considerably heavier or in excess of the inbound movement, it has been necessary to assemble empty box cars and haul them to point of shipment and there store or hold them in readiness so as to move the fertilizer promptly. Fertilizer, as indicated, is a seasonal traffic and must move immediately during a period of approximately 60 to 90 days. The necessity of assembling equipment at the fertilizer shipping point results in a heavy per diem expense which naturally decreases the revenue derived from the fertilizer traffic. (Tes. 247-248.)

For example, at Charleston, S. C., one of the heaviest shipping points of fertilizer on our line and where the outbound business is normally considerably in excess of the inbound traffic, it is necessary to assemble equipment for the movement of fertilizer before the season starts. At the beginning of the season it is necessary to assemble and haul to Charleston approximately 600 box cars and there store or hold them in readiness for shipment at the usual per diem rate of one dollar per day, to say nothing of the loss to us of the equipment for other commodities.

Right at that point in connection with the rate of one dollar a day, the per diem rate, that is not the rate that was prescribed for the purpose of showing the expense of

[fol. 273] owning a car per day; as I understand it, it was arrived at covering the depreciation on a car, and what the correct value of owning a car to the carrier was.

"Q. And the expense of maintaining it; in other words, in a recent case of the Blue Ridge Railroad Company, the Commission itself found that the expense of owning a car is one dollar per day?

"A. I understand so, approximately.

"Mr. F. E. Harrison: Isn't it also true that the carriers hold their own equipment and dispose of the foreign equipment?

"Mr. McGehee: When business is dull, yes, when it is good, they try to get all the equipment they can.

By Commissioner Eastman:

"Q. In view of the fact that the per diem is not supposed to cover a profit, why is it that so many companies are desirous of purchasing equipment for the purpose of getting rid of the per diem payments?

"A. I can't answer that, Mr. Commissioner, I don't know why they want to do it.

"Commisioner Eastman: They say they want to do it to save money." (Tes. 248-250.)

The impression of the Commission in the Blue Ridge Case was that it costs the carriers at least one dollar a day to own the equipment, to keep it up. I have not made any figures at all to verify that dollar a day.

"Commisisoner Eastman: I think if you will look at the reports of the Seaboard Air Line Railway lately, you will find that they take great credit to themselves for having increased their supply of cars and diminished their per diem payments."

Per diem is a reciprocal arrangement, and I understand that the carriers settle with each other on debit balances, and credits. There certainly is special significance to the statement that we pay a dollar a day for the foreign cars on our line when we are earning a dollar a day for our cars [fol. 274] on other lines; you take, for instance, suppose we have got a thousand cars of some other folks on our

lines, and we are holding up 600 cars at Charleston idle during the fertilizer season, and we are using that foreign line equipment, whereas we could have been using our own equipment and saving that per diem.

"Q. Don't you think, in order to have that kind of testimony of any value to the Commission, you ought to show for the time you are covering, the percentage of car ownership on your line?

"A. The Commission already has that.

Mr. McGehee: I don't think personally, so far as this case is concerned, I think that is a mere detail that would not warrant that much work; that is my view about it.

"Mr. Quirk: You have dragged it in.

"Mr. McGehee: No.

"Mr. Cotterill: I think the accounts show the reverse of that condition, my impression is the Southern Railway is generally shown as a credit carrier." (Tes. 250-251.)

After the fertilizer shipping season begins, it is necessary to have available at Charleston during the fertilizer season some 400 serviceable cars, 150 to 200 daily to be placed at 16 fertilizer plants and aproximately 200 must be held in readiness for placing as fast as loaded cars are moved from the plants. In addition to this, the expense of switching to and from these fertilizer plants is heavy. In this connection, attention is directed to the Commission's decision in the South Carolina Fare and Charges Case, 60 I. C. C., 290, Page 301, where it is indicated that the cost of switching a car to and from these industries at Charleston amounted to $5.94 per car.

A study has been made at Charleston, S. C., with respect to the delays to cars held at that point for the fertilizer movement and during the first part of the 1924 fertilizer [fol. 275] season, that is, from December, 1923 to April, 1924, the average delay at Charleston was 7 days per car. This seven days covers the time the car reaches the terminal at Charleston to the time it is loaded and moves from Charleston and covers only the fertilizer traffic. It does not include the time entailed in moving the cars empty into Charleston from origins on the various divisions.

The situations at Savannah, Columbia, and Augusta are similar to Charleston. (Tes. 251-252.)

Cross-examination:

Concerning the organization which has been set up to make the traffic tests for the purpose of this case: Each carrier, as I understand it, is to secure actual movement of their lines, and rerate the tonnage. In the determine of what traffic would be affected by new rates, growing out of this proceeding, so far as the Southern Railway is concerned, it used the list of articles, with reference to the future, that was submitted in Exhibit 8.

I do not recall any commodity tariff that authorized the fertilizer rates on commodities not contained in that list.

If there is such a thing, I think now is the time that you people should give it to us.

That test is embracing a rerating of the intrastate traffic, on the assumption that the rate level here under consideration has for its object the fixation of the rate level appropriate for both State and interstate application; they are rerating the State as well as interstate business.

"Q. Now, as to those tariffs which at this time constitute the rates on imported material, the application of which is in terms limited to imported materials, I presume there can be no misunderstanding between us, that those rates [fol. 276] and the traffic moving under them, are to be embraced within the test?

"A. Well now, candidly, Mr. Cotterill, I did not understand that this investigation took in the importers." (Tes. 253-255.)

"Com. Eastman: I might say on that, that the order as drawn, I think, does not cover import rates, and as no mention is made of foreign commerce, but on the other hand the order does not cover intrastate rates either, except in Georgia, South Carolina and Alabama, and they are going to rerate those on the traffic test, and I think it would be desirable to include the import rates also, so far as the test is concerned, if you are inclined to change this in harmony with the domestic rates." (Tes. 255.)

As to what is the season of the heaviest freight traffic—all traffic—movement in Southern Railway territory: Having made no investigation of that I would not care to offer any suggestions. It would be a guess on my part. I am not familiar with the seasonal variations of traffic—freight

traffic—to the extent that I could tetify on that, without further investigation. It naturally follows that there are periods during which the traffic density is materially greater than during other periods in the year. It is our effort to have the facilities of the carriers adequate to take care of the peak load.

I presume there must be other periods during which there is a surplus of equipment. Regardless of when it may be, during that period of surplus, the freight cars are stored on all available sidings. As I testified, beginning of the fertilizer season, we have to gather these cars—600 in number, to put them down at Charleston, for instance. We have got to keep on hand at Charleston some 300 cars to take care of the 16 fertilizer plants located at that point. Now, we are continually handling empty equipment into Charleston during the fertilizer season. Now, the assump- [fol. 277] tion on your part that there is a surplus supply of equipment during that season is not borne out by the investigation I have made, that it is necessary to handle that equipment into the port. As to whether, in making that investigation my studies went far enough to enable me to determine whether during that period of fertilizer movement normally there is a car surplus, and that the equipment which we assign to that movement is equipment which otherwise would be parked and stored on available side tracks: I went to this extent in my investigation. In connection with the Charleston movement, 600 cars were held at Charleston. I made the inquiry of that supply of cars we are holding at Charleston, what effect does that have on the cars necessary for handling the other commodities. The transportation department conference men told me that when they have to have surplus supply at Charleston to take care of the fertilizer movement, it takes that much equipment out of the general line of business. That they have to handle and keep on the line foreign equipment that they would not otherwise have to keep on the line, if it was not for holding these cars at Charleston, to take care of the seasonal traffic. So, if there was a surplus of equipment, well that would not be true. (Tes. 256-259.)

My investigation did not convince me that the equipment which we do accumulate at Charleston is all company-owned equipment; as much as we could possibly keep into

that fertilizer movement is—it is just one continuous movement. A large per cent of it is mostly company-owned equipment.

In times of car surplus it would seem to be efficiency for the carriers try to rid themselves of foreign-owned cars.

I imagine it would be proper during the period that they did not need them to park their own cars, which are not needed, put them on side tracks. (Tes. 259.)

[fol. 278] My investigation was not complete enough to enable me to say whether the period of fertilizer movement corresponds with the annual surplus of all equipment, and to the fact that during that period of surplus, equipment assigned to the fertilizer business is mostly company-owned equipment. The extra cost I spoke of in connection with the fertilizer movement is not distributed throughout the year, but occurs or piles up in one or two months. As to whether in view of that fact the carriers think it good business or would they be willing to make a lower rate applicable on fertilized in other months of the year in order to encourage and induce the movement of fertilizer traffic during that period: We are opposed to seasonal rates. I do not think that would have the effect of spreading the traffic and encourage the farmer to get his fertilizer in ahead of time. As my experience goes, the farmer waits until the last minute to buy his fertilizer. He won't buy ahead of time; I don't care what encouragement you give him. Of course, a good many of them have to buy it on credit. If they buy it ahead of time they have got that interest to pay on the money they use to purchase the fertilizer. So even if he had the seasonal rates, I don't think it would be of advantage. We have never tried it to see what the effect would be.

Concerning the element of extra expense involved and what I mean by extra expense: Take Charleston, for instance. Fertilizer industries are located, oh, about 10 or 16 miles away from Charleston. We have got to gather that traffic from those fertilizer industries in order to make up the trains. That switching expense at Charleston is very heavy. That is 15 miles from the yards, or from Charleston. I think that classification at Charleston is done at the seven-mile station; I am not sure. I don't know

whether the fertilizer companies as a rule furnish their own switching locomotives and crews between their plants and our lateral tracks. Seven miles is the point at which the classification yards are located, I believe. The delay of this equipmert naturally has to be taken into considera- [fol. 279] tion—in holding it, parking it at Charleston. I did not have reference to the delay by fertilizer plants in loading the equipment after they get it placed at their plants when they get ready to ship fertilizer—and have got orders for it—and order the cars shipped in there, they usually ship pretty promptly. They load it as fast as we can switch the cars out of the track, and that keeps the switch engine there partly to perform that service. You cannot use equipment that has handled fertilizer for any other commodity. You can use it for sand, scrap iron, or something of that kind. (Tes. 260-263.)

As to the relation that has to extra expense: A good many of the cars have to be cleaned. I think those are the important items. Back-haul empty movement is in connection with the equipment feature which I mentioned. As to whether, ouside of Charleston and, conceivably, Savannah, there are any other fertilizer manufacturing plants in the South where these conditions are that I have described: To a certain extent some of the interior factories have considerably delayed equipment. I have made no detailed investigation as to any other place where a haul of 7 or 15 miles is involved before the classification occurs; I don't want to answer offhand, without having made the investigation as to each point. The condition described at Charleston is typical for Charleston; I think it is comparable with Savannah, and probably Norfolk and some of the interior points; probably the switching is not as great as it is in Charleston. With reference to what the carriers do in respect to cleaning the cars that cost money: They have to wash the car out. I don't want the record to indicate that we wash out every one of those fertilizer cars. That is absurd, but you take a fertilizer car that you are going to put in for merchandise, or something of that kind, you have to clean that car. I don't want to leave the inference that every one of them is cleaned. The equipment we try to keep in the fertilizer trade particularly for that

reason—of course that is not cleaned every time it makes a trip. You take Savannah and New Orleans—now, I have [fol. 280] had occasion to investigate the situation down there in connection with the sugar case. We have kicked into the plants at New Orleans and also Savannah, equipment for loading sugar that has been previously loaded with fertilizer. Notwithstanding that those cars had been cleaned, the sugar people positively refused to load sugar into the cars, after having been cleaned. As a general rule, we do not clean fertilizer cars. Even when we do clean them, I have no idea what the cost is of cleaning the car. You would have to wash the car—flush it by putting a hose in it, and scrub it. I am not qualified to say whether it would take a couple of hours at the outside. That is one of the least of the items I had in mind in speaking of the extra expense. (Tes. 263-267.)

I don't know whether or not 15 miles is an unusual distance between the point at which the car is loaded and the place at which it may commence its line haul movement; you have to take your weighted average, I don't know what is. Of course, you may pick some point like Birmingham for instance and find particular plants that are located at one end of Birmingham, and another plant at the other, would be about 5 miles, but that does not indicate that the traffic from Birmingham is always handled from that 6-mile haul. You take that fertilizer business at Charleston, it does not mean that you are handling that for your 15 miles at that point. Similarly at other places, the switching lengths might be greater than 7 or 15 miles, or less than that. I can't answer right now as to any instance where it might be greater; there is no conspicuous illustration, because I have made no investigation to develop it. I don't know the number of system box cars our company owns; I would not venture to estimate. I suppose 600 box cars is a comparatively small percentage of our system-owned box cars. I don't believe the fertilizer has moved direct from the factories to the farm this year. The fertilizer this year, as I understand, is being handled by a broker. Now, whether he takes the order, and has the fertilizer shipped to the farm direct, I don't know. Naturally to some extent it is shipped from the factory to

[fol. 281] warehouses and distributed out of the warehouse. With that being the case and concerning whether the traffic can be equalized to some extent: As I stated, we are called upon to handle that traffic within about 60 or 90 days. Now, whether a system of that kind could be worked, I think the fertilizer people can tell us better than I can. The movement between the factory and the warehouse always occurs at this time of heavy fertilizer movement, along with the other movement. I have heard it to be a fact that the man who is buying fertilizer from the manufacturer, if he has not a warehouse of his own, ordinarily he puts it in a cotton warehouse and then, when he sells a ton of fertilizer to a farmer, he gives the farmer an order on that local cotton warehouse, and he goes there and gets his fertilizer, and the fertilizer dealer pays so much per ton per month, for the privilege of storing this fertilizer in that warehouse. There has been a good deal of argument as to who pays the freight on that car. I think the consignee pays the freight bill—the consignee is the jobber; to whoever it is consigned. As a matter of fact, fertilizer is not moved out of the ports, where it is purchased in large quantities, throughout the year and stored at warehouses near to the point of distribution and shipped from there in the season when it is used. (Tes. 267-270.)

Concerning something persuasive as leading to any necessary conclusions between a comparison of the earnings per car, or per car mile, on an article loading 20 tons, and another loading 40 tons: The value of your equipment to you, the earning capacity of the equipment. It is absolutely not so that on all the exhibits submitted by me, the rates per ton, on fertilizer, appear to be higher than the rates per ton on all the other articles with which I make comparison; on the low grade commodities, such as sand and gravel, the fertilizer rates are higher per ton than the rates on those commodities, but there are a good many exhibits in here that I have filed, in which the rates per ton are comparable with the fertilizer rates. (Tes. 270-271.)

[fol. 282] "Q. Do I understand that in a given case, where you find a difference between the per car or the per car mile earnings on two commodities, that your mind at once

then concludes that one or the other, or both of those rates are wrong, and that a new rate would be right?

"A. Not necessarily, no. That is one of the considerations that influence you in making rates."

I have shown on each one of those exhibits the value of each commodity—the commodity that is loaded in the car. The Southern Railway doesn't make rates by having a predetermined standard of carload earnings to which it aspires to bring the rates on individual commodities, so that they will each yield something approximating that standard. As to how, if we don't make rates that way, a difference in those earnings per car demonstrate whether either of two rates is wrong at all: I feel it is very persuasive. It may not be conclusive, but it is very persuasive. The rates are not made that way even though it is very persuasive; that is not the controlling factor. You take on low-grade commodities, maybe the per car earnings and per car mile earnings have more control than on higher grade traffic. If you are confronted with the fact that one article yields more per car mile earnings than the other, still neither may be wrong; there are other circumstances that enter into it. I think those exhibits are very persuasive as to the reasonableness or propriety of a freight rate level on fertilizer. If I thought that they alone sufficed to demonstrate any necessary conclusion, I never would have made the other analyses.

"Q. Then, we come at once to the other theory, Mr. Gardner, in which you have compared rates on fertilizer in the South with rates on fertilizer in some other territories. I think that was the second, or at least is one of the other of your theories.

"A. That is the particular theory you laid before the South Carolina Commission, to get our rates reduced." (Tes. 271-275.)

As far as the 9702 scale goes, I disputed that theory. And I dispute it now. In 1914, and immediately prior thereto, Southern Classification contained 10 classes, as I [fol. 283] recall; six numbered and four lettered classes. I won't subscribe to saying that Class A was used less

than the other of the lettered classes. I have made no investigation to determine that, of the business moving under Southern class rates, something in the neighborhood of 70 or 80% is less than carload business. I have heard rumors as to the proportions of tonnage and revenue moving under class rates in the South, at that time and now. I don't know whether it was true in 1914, or now, that the overwhelming tonnage and revenue of Southern carriers derived from freight transportation comes from commodity rates; I have made no investigation of that. I have no business to testify to that as being facts.

In Official Classification Territory the bulk of the business moves on class rates. It is true that on many heavy commodities in the Southern Territory they move on commodity rates. Speaking of the fertilizer involved in this case, as I testified in this proceeding prior to the Commission's decision in the Royster case, which was in 1914, as you are speaking of, we were maintaining substantially higher than the third Royster scale on fertilizer, especially in the Carolinas, which was cut out. They were higher, probably that the rates in the Trunk Line. The Commission reduced those rates for us, and in the Royster cases controlling the Carolina situation particularly. In other states, even at that time, the fertilizer rates themselves were less than in North Carolina. I think the Commission's decision in 3866 will speak for itself.

"Q. Now, in order that the record may be technically complete, is it not a case, that subsequently to 1914, so far as Southern Classification Territory is concerned, there were but two general advances, and each was 25 per cent.?

"A. You are speaking of all commodities?

"Q. Yes, of course, there are certain articles as to which there are arbitraries.

"A. I know of one, there was an advance under Ex Parte [fol. 284] 57 in the South." (Tes. 276-278.)

Speaking only of the percentage advantages, intraterritorially it is correct that there were two 25% advances in the South; G. O. 28 and Ex Parte 74, with a subsequent decrease of 10%. In Official Territory, omitting for the present reference to the changes which were produced by the

Disque Scale, the percentage advances, commencing in 1914 and subsequently, were: 5% advance in class rates; the 15% case—I am not sure if that was applicable to commodities as well as classes; G. O. 28; Ex Parte 74—that was a 40% advance in Trunk Line Territory and Official Classification, and the total was later decreased 10%. It is mathematical that that leaves the Southern rate structure, so far as advances are concerned, approximately 40% higher than 1914. I have not verified your ratio that it leaves the Northern advances approximately 90% higher than 1914.

"Q. Have you undertaken, Mr. Gardner, at any time in the past, or in connection with this case, to determine how the so-called Royster scale itself compares at the time of its commencement with the then existing 6th class rates in Official Classification Territory?

"A. No, I was interested in the present rates. Rates that are now moving the traffic, today."

In Southern Classification Territory the carriers have not thus far sought to advance the charges on clay products within the South in part because of higher rates on those products in the North; absolutely not. They have sought to put the clay product rates on a reasonable basis, and the Commission, in I. & S. 1885, would not let us do it. We used the higher rates in the North as one of the justifications for the attempted advance; we used that as a comparison, the same as you have used many comparisons to get these fertilizer rates hammered down. (Tes. 278-281.)

I think the Commission's decision in the North Carolina case fully explains why those North Carolina rates are so low. The intrastate rates in North Carolina were the re-[fol. 285] sult of the Justis Act in 1914. They were not voluntary rates, and they were not rates that the carriers have ever thought were proper. I cannot tell you what was in the minds of the Justis Commission when they knocked off about 25 or 30% of our revenue in North Carolina in 1914. I have made no comparative study of the commodity rate level on every commodity in Carolina territory as compared with the remainder of the South, but we have some mighty low rates in North Carolina. I cannot subscribe to the statement at all that the commodity

rates in the Carolina Territory are today broadly higher than in the remainder of the South, because I know that the lumber rates in the Carolinas are not higher than they are in the South. It is my judgment that the level of the rates in the Mississippi Valley are less than they are in the Carolinas, but Mr. Cotterill was dealing with the Southeast. (Tes. 282-284.)

I would not say the same thing as to the difference between the South and the Carolinas. I know the North Carolina Commission has reduced a good many of those commodity rates in North Carolina to basis below the Southeastern scale. There has been no occasion calling upon me to make the comprehensive comparison on the entire situation so far. I have made no investigation as to the total freight earnings of the Southern Railway System. One of Mr. Menzies' exhibits did not give the percentage of tonnage and revenue which fertilizer bears on the Southern. The Commission does not require the carriers to keep revenue figures on commodities. It is only recently the Southern has undertaken to keep any revenue at all on any particular commodities, and we did that in a test during the period January to July, 1924, and that is the latest I have, and it takes in the fertilizer season. That is both tonnage and revenue. The fertilizer tonnage for that period was 4.20% of the total tonnage. The revenue was 3.63% of the total revenue. That is the total freight revenue. We gave the tonnage figures on the Southern Ry. in 1923 in one of our exhibits. We keep that. Commission's Classified Report requires that, but they do not require [fol. 286] the same tabulation as to revenues. (Tes. 284-286.)

"Q. It appears from what you have just said that the fertilizer tonnage was the larger per cent. of the total tonnage in 1924 than in 1923.

"A. First seven months, you see that takes in, Mr. Commissioner, the heavy fertilizer season, which is seasonal, you see. That probably accounts for that discrepancy."

There is no detention of the cars at Charleston, so far as the Southern is concerned, after the cars are loaded. I

do not know how that compares with the detention on the whole line.

Cottonseed meal does not take the fertilizer rates in the West. The cottonsed meal tonnage is not shown in this statement in Southern Territory. I gave 2 lists from that exhibit of the commodities which the Commission used in their statistics on common carriers. I merely copied what the Comission had used, and put it in statement form, and at the bottom of the exhibit, I think I tabulated the commodities that the Commission used. Fertilizer material rates do not necessarily mean cottonseed meal. Cottonseed meal takes the fertilizer rates; it did not take the fertilizer material rate. I think the Commission's reports will speak for themselves as to whether cottonseed meal is included; I don't think they are included. (Tes. 286-288.)

Referring to Exhibit 80: There is no appreciable movement of complete fertilizer from Ohio River points moving from 400 to 800 miles into the Southeast. The principal movement from the Ohio River is materials, and in the past there has been a fair movement of tankage, but I understand in recent months or years that the movement of tankage has not been as substantial as in the past. That the fertilizer mixers, as I understand it, have succeeded in getting their ammonia content from sulphate of ammonia, or commodities other than tankage; that is my information. I wanted to show exactly the situation from the Ohio River, that is all; I did not even intimate there was a heavy tonnage. I think we made that pretty clear in the record.

[fol. 287] Referring to Exhibits 96 and 105: On Exhibit 96 I show a scale headed "C. F. A. present rates." Taking, for example, 220 miles, I show the Royster scale. I think that is the rate we propose for Southeastern territory. The scale we are proposing is the Royster scale. For the same distance, C. F. A. scale is 4.20, as shown on the exhibit. On Exhibit 105 for 220 miles I show 3.60. That is considerably lower than the C. F. A. scale. These 9702 rates were prescribed since the advances, February 6, 1923. On this exhibit 105, for 80 miles, the Royster scale is 2.25 and the Southwestern scale 2.00. The 9702 scale, as I have indicated, were not prescribed as maximum reasonable rates. I do not think it is proper to take those rates to measure the standard of the rates in the Southern Ter-

ritory or in any other territory; any more than it would be proper to take the rates which the Commission prescribed in our I & S 1885, the brick scale, and reduce your rates in C. F. A. territory. (Tes. 288-291.)

Generally speaking, I would say that the Southern lines were entitled to publish a reasonable level of rates if that gives them higher than the Western lines. I have in mind decisions of the Commission in one or two cases, where they stated that the traffic density did not justify higher rates in the Southern Territory than in the Western Territory. The question as to whether this test that is to be made will include cottonseed meal and hulls will be settled at conference tomorrow.

I have made no study to compare the revenue per ton mile and per car mile on fertilizer under our proposed scale with the average revenue per ton mile or per car mile on other commodities on our line. I wish that our traffic or accounting departments would make monthly reports showing the loading, tonnage, average haul, and average revenue upon these commodities; I would like to know that average haul on some of these commodities. Our line does not make that report.

"Q. About the Southwestern scale that you have shown here on one of these exhibits. A comparison of the com- [fol. 288] modity rates prescribed by the Commission in I. & S. Docket 1303 in the Mississippi Valley, with the level of rates prescribed on the same commodities by the Commission in Docket 9702, did the Southwestern case show that the level of rates in the Mississippi Valley is approximately 80 per cent of the level of rates they prescribed West of the River?

"A. No, sir, I cannot subscribe to that, Mr. Martin."

There will be another witness to testify about the Valley. As to whether I think that the fertilizer rates in the Southeast and the Mississippi Valley might bear the same relation to the fertilizer scale west of the River that the Commission has found proper between I. & S. Docket 1303 and Docket 9702: Both cases were to remove certain inconsistencies, and to bring about an equalization of revenues

for the Mississippi Valley lines, and for the Western lines, and I don't think they either one ought to be used for measuring the rates in the Southeastern Territory at all; either relationship or otherwise. In this Fourth Section revision that will be brought about later in the commodity rates, very substantial advances in the Mississippi Valley level of rates on all commodities generally should be brought about; I don't know whether it will or not. It should do it; those rates over there are ridiculous. This proposed fertilizer scale will bring about very substantial increases in the territory of the Valley too, but there is a very light tonnage over there. At least, I say yes, I have not checked in detail. I should say I don't know. We have got to put all these fertilizer rates on 4th section basis; I have made no detailed check of the Valley.

Under the statement, number of cars of fertilizer handled in Southern territory for 1923, Exhibit 42, that was actual weight as reported to the Commission. I expect that also includes where the loading is less than minimum.

Within the past 60 days the Southern Ry. reached its peak in its history on loaded cars, so we have had no empty cars lying around during that time. When I compared rates on fertilizer with rates on other commodities it was not with the thought that the rate on any other commodity should be the sole standard for measuring the rate, but they were compared for what they were worth. (Tes. 293-296.)

[fol. 289] J. L. Sheppard was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

(Statement:) We are proceeding a little out of order just at this time, at the request of the Mississippi people, who ask that we put in such testimony as we had relating to the Mississippi adjustment and the Mississippi Valley adjustment.

My name is J. L. Sheppard. I am assistant general freight agent of the Illinois Central Railroad, the Yazoo & Mississippi Valley Railroad, with headquarters at Memphis.

Tennessee; have been connected with those roads for about 29 years, and during the last 12 years have been assistant general freight agent, with headquarters at Memphis, Tennessee.

I may say that all of my experience with the Illinois Central Railroad System lines has been on the lines South of the Ohio River. And, in my statement, I will say I am generally familiar with the adjustment of rates in the Southern section of the country, and particularly in that section of the country by served our lines.

In presentation of this case, the carriers arranged for certain representatives to deal with specific situations, not only to shorten the proceedings, but at the same time fully to acquaint the Commission with the adjustments and conditions existing throughout the territory. My testimony will relate to the adjustment in Mississippi, in which State our roads have considerable mileage.

It is not my purpose to duplicate the testimony of other witnesses who have shown or will show the locations of the various fertilizer factories in Mississippi, the production and consumption in that State as compared with other States, but I will deal directly and specifically with the [fol. 290] rate situation in that State. However, as general information, and on a point on which I understand the Commission asks information in regard to consumption of fertilizer, I will say that in the Delta section of Mississippi, which, generally speaking, embraces that territory on and east of the Mississippi River, Memphis south to Vicksburg—I mean, north to A. & V. Railroad from Vicksburg to Jackson, and west of the main line of the Illinois Central Railroad, from Jackson, Mississippi, through Corinth to Memphis, Tennessee, the principal consumption of fertilizer is nitrate of soda. I will say that that is the section which produces almost exclusively cotton, and about the only fertilizer that they use in that territory is nitrate of soda in its original state. In the territory south of the A. & V. Railroad, which might properly be termed the hill section, and particularly along the line of the Y. & M. V. Railroad and the Illinois Central Railroad more particularly the Illinois Central Railroad, there is production principally of vegetables, there being some

production of cotton and other agricultural products—the principal consumption in that territory is mixed fertilizers, as distinguished from the nitrate of sode. However, there is also consumed in that section of the State, as well as in the other hill sections of the State, which would embrace all of the State except that which I have described as the Delta section, the principal consumption would be mixed fertilizers, and following that would be acid phosphate, nitrate of soda, and what they term kainit. (Tes. 297- 299.)

As to the consumption of fertilizer in the State as a whole, the best information I could get on that point was that fertilizer, 75 per cent of the fertilizers used in the [fol. 291] State of Mississippi, consist of nitrate of soda and acid phosprate.

(Certain statements were thereupon received in evidence and marked "Respondents' Exhibits Nos. 135 to 142, inclusive, Witness Sheppard.") (Tes. 300.)

My first exhibit, No. 135, is a statement of the rates on fertilizer, carloads, between points in the State of Mississippi. The rates shown on the statement being the rates generally applied for single line movement throughout the State. There may be specific rates here and there to meet some peculiar or unusual situations, but the rates generally applied for single line movements between points in Mississippi are those shown on this exhibit.

In some instances the rates are published specifically, as fertilizer commodity rates on a mileage scale basis, and in other instances the rates are covered by exceptions to the classification. For example: On the I. C. Railroad and the Y. & M. V. Railroad in Mississippi, we apply Class O mileage rate, which is an exception to the standard classification rating which is given to fertilizer under our exceptions in Mississippi to the Classification basis. Other lines, for example, the A. & V. Railway, have commodity rates and the description applied by them is indicated on the statement.

The statement shows whether the rates are class or commodity rates, and when I use the word class in this statement, I means exceptions to the standard classification basis. The statement is self-explanatory. A comparison of the

rates operated in Mississippi, with the rates operated generally in the Southern Territory will show that the rates in Mississippi are about the lowest, if not the lowest, applied in the entire Southern Territory.

[fol. 292] The next statement, which I offer as Exhibit No. 136, shows the rates applied for a joint line movement on fertilizer between points in the State of Mississippi. I will explain in detail a little bit later on just how the rates in Mississippi for joint line movements are made, but now, in explanation of this exhibit, will say that the general basis in Mississippi for two-line commodity rates is to make a deduction from the scales of the single-line rates, under the through rates from the point of origin on one road to a point on the other, and is made by combining the net rate so obtained. The net rates, however, are published specifically, and it is not necessary to use a table in order to get the net rates to be applied for joint line movement. To illustrate, on a shipment coming from a point on the Y. & M. V. Railroad, destined to a point on the A. & V. Railway, that would be 10 miles from Jackson, the rate to Jackson on the Illinois Central Railroad would be 90 cents, and the rate for the 10-mile haul on the A. & V. Railway would be 90 cents, a total of $1.80 for the through movement, as can be seen from this Exhibit 136.

In an effort to locate the origin of the old rates in Mississippi, and when I say old rates, I mean these shown on the exhibit which I have just offered. (Tes. 300-302.)

I had our records examined for a number of years. However, the records have passed through one or two fires, and they have been moved from time to time, and are incomplete. There are shown on the statement which I now offer as Exhibit 138, the rates in effect on the I. C. Railroad in Mississippi on June 26, 1897, and the changes which have been made to date. I have also shown on the same statement the rates in effect on the Y. & M. V. Railroad on August 10, 1901, to date, from which it will be observed [fol. 293] that the only changes that have been made in the rates operated in Mississippi during the period of 25 years or more have been the general increases under General Order 28, Ex Parte 74, and Reductions of July 1, 1922.

While our records are not in such shape as to show

positively that the rates in Mississippi were originally fixed by the Mississippi Railroad Commission, I find statement by Mr. W. D. Hurlburt, one of our former assistant general freight agents, to the effect that on the Y. & M. V. Railroad prior to 1895, there was, in addition to the general distance tariff which applied for State and interstate application, separate distance tariffs on a variety of articles such as brick, cottonseed, fertilizer, coal and coke, lumber, logs and live stock, all of which he had covered in a proposed tariff by Classes K, L, M, N, O, P, R, S, T and W at substantially the same rates as those in effect, which it was found impracticable to advance or change in some instances on account of the rates having been fixed by the Mississippi Railroad Commission.

The Biennial Report of the Mississippi Railroad Commissioners for the two years ending June 30, 1891, appears to support Mr. Hurlburt's statement to the effect that the rates on fertilizer were originally fixed by the Mississippi Railroad Commission, because the following statement is made on page 5 of the report.

"Besides the revision of distance tariffs at different times during 1890 and 1891, we have established a great number of commodity tariffs, some of them being submitted to us by the railroad companies at our suggestion, and some without, but in all cases being a lower rate on the articles in question than fixed by the general tariff. The commodities referred to include cotton, hay, corn, wagons, furniture, canned goods, tomatoes, vegetables, chairs, spoke [fol. 294] material, hickory timber, buggies, cottonseed meal, ice, firewood, domestic and factory goods, grain, brick, fertilizer, cottonseed, lathes, shingles, iron articles, bacon, coal, etc. Some of these commodities are made to apply exclusively to native products such as hay, corn, cottonseed, etc., our object being to afford local rates to stimulate production." (Tes. 302-304.)

The records of the Mississippi Commission will show whether or not there was ever any order reducing the rates; that is their Biennial Report, as far as we could determine it.

Their files should show whether or not there was another, if they were kept at that time, but they included in their

Biennial Reports the changes that they had made, and in subsequent Biennial Reports, they set out specifically the rates they had established.

"Q. Some of the rates apparently are not reduced by order, but the inclination is that the carriers came in, and they talked with them, and the carriers agreed to reduce them without an order?

"A. That might have been equivalent to an order in those days, Mr. Commissioner. He says they were submitted by the railroad companies at the suggestion of the Commission. I may state, however, that my information is that quite generally in the earlier days the Commission did suggest to the carriers that there be reductions in rates, and those suggestions were followed, and not necessarily because the carriers recognized those as reasonable maximum rates that had been suggested, but, because it indicated the trend of the Commission's mind, and that they would probably enter an order upon a hearing in investigation. I will state, quite frequently the policy has been followed by the Mississippi Railroad Commission, as has [fol. 295] been stated here, to make rates to stimulate production in the State of Mississippi, and that has happened in recent years, during my experience before the Mississippi Railroad Commission."

The statement made in the Mississippi Commissioners' Biennial Report ending June 30, 1891, to the effect that they established commodity rates on fertilizers supports the record made by Mr. Hurlburt that the original commodity rates were fixed by the Mississippi Commission and that later these commodity rates were converted into Class O rates on our road; however, some of the roads still carry the rates as commodity rates.

On that point I wanted to make this statement, it is only in recent years that the Mississippi Commission has adopted the policy of making uniform rates on different roads in the State of Mississippi. In other words, in years gone by they did make different rates on different roads. For example, the Y. & M. V. road for years had different rates from points on the Illinois Central, and to some extent it has rates different today. However, in recent years the

Mississippi Commission has been making the rates on what it terms the standard railroads, the same on all lines of railroads. However, it will be seen that in quite a number of instances that the commodity rates on the other roads in the State of Mississippi are the same as the Class O rates on the Illinois Central Railroad. That will be observed from Exhibit 135. (Tes. 304-306.)

As to whether, in those cases where the Mississippi Commission has prescribed rates for the I. C. and the Y. & M. V. Railroad, different rates, the rates were prescribed for the Y. & M. V. invariably higher than those prescribed for the I. C. Railroad: I could not answer that they have not [fol. 296] given us any differential rates on the Y. & M. V. in a good long while. You are getting back a little bit before my time.

With respect to the rates for joint hauls there is no question about their having been fixed by the Mississippi Railroad Commission. The basis having been reported in the Biennial Report of the Mississippi Commission for two years ending June 30, 1903. After the Commission had been given authority by law to fix these rates for joint haul movements, the basis prescribed by the Commission at that time being for distances 50 miles and less, 10 per cent reduction in local rates of each line.

Distance over 50 miles and under 150 miles, 15 per cent reduction.

For distance 150 miles and over, 20 per cent reduction.

Rates worked out on this basis have been continued in effect to date, subject, of course, to the general advances under General Order 28, Ex Parte 74, and Reductions of 1922, under Docket 13293. And the rates referred to are those covered by my Exhibit 136.

On the statement offered as Exhibit 137, I have shown in comparison the rates on fertilizer between points in Mississippi on the I. C. Railroad for distances 5 to 300 miles with the rates from Memphis, Tennessee, and New Orleans, Louisiana, to Mississippi destinations for substantially the same distance, from which it will be seen that the rates in Mississippi are much lower than the interstate rates from Memphis and New Orleans for substantially the same distance, or in other words, Mississippi has an adjustment which is considerably lower than the interstate adjustment.

I think that exhibit is self-explanatory, but in order to make it entirely clear, I will call attention to the rates for 100 miles. It will be observed that the Mississippi rate for 100 miles would be 7 cents per 100 pounds on the Illinois Cen- [fol. 297] tral, while the rate from Memphis to Corinth, Mississippi, for 100 miles, is 12½ cents per 100 pounds, and from New Orleans to Magnolia, Mississippi, the distance being 99 miles, the rate is 12½ cents per 100 pounds.

By Com. Eastman:

"Q. It is a little bit confusing, after — had these rates stated in per net tons right up to this point, and you make it per 100 pounds.

"A. Well, it would simplify the matter, Mr. Commissioner, and I would be glad to withdraw that exhibit and express those rates in per ton, but I was using them just as they wre published in the tariff. If it will simplify it, I will be very glad to do that.

"Q. I don't think it is important. It shows the relative level of the two.

"A. Yes, sir." (Tes. 306-308.)

In my Exhibit No. 139 I have shown typical illustrations at representative points in Mississippi where Mississippi fertilizer manufacturers have advantages over the interstate shippers to Memphis. The carriers have received some complaints from the interstate shippers at New Orleans, Mobile and Memphis, in regard to situation of the character illustrated by this exhibit.

In order that the exhibit may be clearly understood, will say that I have used actual fertilizer producing points, both State and interstate, which do business in the State of Mississippi, and in order that the exhibit may be entirely clear, I call attention to the first illustration, which covers Chatawa, Mississippi. This point is on the I. C. Railroad, 91 miles south of Jackson, Mississippi, in the direction of New Orleans, to which the fertilizer manufacturers at Jackson enjoy a rate of 7 cents per 100 pounds. The distance from New Orleans over the I. C. Railroad to the same point is 93 miles, and the rate is 12½ cents per 100 pounds. Or in other words, Chatawa, Mississippi, is just halfway [fol. 298] between—approximately halfway between Jack-

son, Mississippi, and New Orleans, and both points have about an equal haul over the same line of railroad, and it will be observed that there is a difference in favor of the Mississippi intrastate shipper at Jackson of 5½ cents per 100 pounds, or $1.10 per ton.

The other illustrations are prepared in exactly the same manner. For example, on the N. O. & N. E. we have used Meridian and New Orleans as representative shipping points to Hemlock, Mississippi, where the distance is the same. The same is true of other points shown on the exhibit and it can be seen that in all instances there is a difference in favor of the intrastate shipper. These illustrations are typical of others which exist in the adjustment as it stands today.

Mississippi is in the Mississippi Valley Territory, which embraces that section of the country on and south of the Ohio River, Paducah to Cairo; on and east of the Mississippi River, Cairo to New Orleans; on and north of the Gulf of Mexico, New Orleans to Mobile, on and west of the main line of the M. & O., Mobile to Jackson, Tennessee; thence via I. C. Railroad to Milan; L. & N. to Paris and N. C. & St. L. to Paducah.

The rates in the territory mentioned have, in many instances, been lower than existed throughout the South, due to water competitive conditions existing in that territory. It is not my purpose to go into detail in regard to this matter except to make the statement that the conditions controlling and compelling the low level of rates in Mississippi Valley Territory and particularly Mississippi River points, such as Memphis, Vicksburg, Natchez and New Orleans, in Fourth Section Violations in the Southeast, 30 I. C. C. 153, and the Commission by Fourth Section Order 3866, issued in that proceeding, gave the car-[fol 289] riers relief from the application of the Fourth Section. (Tex. 308-310.)

In a subsequent investigation, however, covered by Docket 9702, known as the Memphis Southwestern Investigation, the Commission issued Fourth Section Order 7542 on December 2, 1919, in which it denied the carriers Fourth Section Relief, it being stated in the report that the conditions no longer warranted the continuance of the Fourth Section relief previously granted. The interstate rates on

fertilizer to points in Mississippi were revised to conform to the provisions of the Fourth Section. When I say that I mean they were revised from Memphis, New Orleans, Ohio River Crossings and related points. They have not been revised, as I recall it, from the Southeastern Territory to the Mississippi Valley Territory as yet, and there is some movement of fertilizer from that territory. And those rates do not as yet conform to the provisions of the Fourth Section. First the class rates were revised, and later the commodity rates were revised. The revised commodity rates suggested by the carriers were published to take effect March 1, 1921, but they were suspended by the Commission in I. & S. 1303.

For many years the rates from St. Louis and Louisville to points in the Mississippi Valley Territory had been grouped, and in the revision of the class rates this grouping was continued. In working out the revised commodity rates the carriers generally determined base rates in the following manner: By using St. Louis to representative points in the Southwest, and Louisville to representative points in the Southeast, and adopting as basing or key rates the lower of the rates to the territories mentioned. I will illustrate, we will take for example the rate from St. Louis to Little Rock, it would be a distance of approximately 349 miles, and take the rate from Louisville to [fol. 300] Birmingham, where the distance was 393 miles, and we would adopt either the lower of those two rates, or rates approximating the lower of those two rates, as the rate from St. Louis Louisville group to Memphis, the distance from Louisville being via the short line 380 miles—that is, Louisville & Nashville—and the distance from St. Louis being 305 miles, via the Frisco.

After determining the base rate in this manner they then ascertained the relationship of the proposed base commodity rates to the first class rate to the base point and the same percentage relationship was applied throughout the Mississippi Valley territory. (Tes. 310-312.)

Now dealing specifically with fertilizer, the carriers proposed from St. Louis-Louisville group to Memphis a rate of 23 cents per 100 pounds, which was made by ascertaining the percentage relationship of the commodity rate from

Louisville to Birmingham with the first class rate and the same percentage relationship was applied to the first class rate to Memphis, which resulted in rate of 25 cents per 100 pounds. That is, by taking rates to representative points in the Southwest, and the representative points in the Southeast and determine the basis. Determining the base rates. On fertilizer we took the rate from Louisville to Birmingham as the base, that being the lower of the two, and we found out what percentages the Louisville to Birmingham commodity rate bore to the first class rate from Louisville to Birmingham, and we made the commodity rate to Memphis by the use of that percentage, which resulted in a rate of 23 cents per 100 pounds from Louisville, Kentucky—St. Louis group, to Memphis, Tennessee. In other words, the rate was not only lower than from St. Louis to a point in the Southwest, but it was relatively lower than the rate from Louisville to Birmingham.

[fol. 301] Having determined the percentage relationship to first class to the base point, Memphis, in this manner the carriers then applied the same percentage relationship to other destinations which included the Mississippi points, and from other points in the Mississippi Valley Territory; and also they are origin points. In this manner we obtain uniform gradation and relation of rates on classes and commodities.

The rates proposed by the carriers were suspended by the Interstate Commerce Commission in I. & S. 1303, and in its decision 64 I. C. C. 396, the Commission indicated that is the carriers bases were followed, the revenue of the Mississippi Valley Lines would be increased, and they state in the Fourth Section revision the carriers should go no farther than to revise their rates to conform to the Fourth Section, and at the same time yield approximately the same revenue, or in other words, the depressed adjustment should be contained in revised form. For the purpose of meeting this condition the Commission required the carriers to establish from St. Louis Louisville group to New Orleans a rate of 29 cents per 100 pounds, and they stated that the plan of relating the rate to the first class rate as proposed by the carriers, should be observed for the purpose of gradation and relation. The rate on basis the carriers propose from St. Louis to New Orleans would have been 32 cents

per 100 pounds. That 29 cents per 100 pounds is on fertilizer. Now, the 29 cents on fertilizer from St. Louis-Louisville group to New Orleans was 3 cents per 100 pounds lower than had been suggested by the carriers, on the basis that we outlined, that is, taking the Louisville to Birmingham rate as the base. Or in other words, the carriers suggested St. Louis-Louisville group to New Orleans, a rate of 32 cents per 100 pounds. (Tes. 312-314.)

[fol. 302] In fixing the rates in the Mississippi Valley Territory the Commission did not prescribe the rates on fertilizer or the other commodities as reasonable maximum rates, and in their original report, in the original proceeding, as well as in numerous subsequent investigations, they have said that the rates prescribed in the Mississippi Valley were not fixed as reasonable maximum rates. On the statement which I offer as Exhibit 140, I have shown some extracts from the Commission's decisions in several cases to this effect. None of these decisions, however, relate specifically to fertilizer, but they relate generally to the Mississippi Valley adjustment, and particularly to the adjustment referred to in the proceedings covered by the dockets mentioned in the exhibit.

The question naturally arises what if any action has been taken by the railroad operating in Mississippi looking toward harmonizing that State and interstate adjustment, and in this connection there is now pending before the Interstate Commerce Commission Docket 9332, of the Memphis Freight Bureau, in which it is specifically alleged that Mississippi shippers are unduly preferred and that the adjustment from Memphis, etc., is discriminatory.

This case was heard about in 1916.

In conference held in Jackson, Mississippi, on January 3, 1923, which conference was arranged by the Hon. E. I. Lewis, the Commissioner of the Interstate Commerce Commission, and Director of Traffic M. V. Hardie, attended by the Mississippi Railroad Commissioners and numerous State and interstate shippers, it was suggested that the carriers and shippers undertake to harmonize the differences and establish an adjustment which would temporarily take care of the situation pending the decision of the Commission in Docket 13494.

[fol. 303] Fertilizer was not included in the complaint mentioned, but as there have been complaints from interstate shippers in regard to adjustment on this commodity, the suggestion was made by the carriers that a revision of the fertilizer rates be considered along with the other commodities that were mentioned. On June 29, 1923, the carriers submitted to Mr. James S. Davant, and to other interested shippers, also the Mississippi Railroad Commission, some tentative rates, including rates on fertilizer, carloads. The figures suggested by the carriers on fertilizer, according to my recollection, were predicated on the Third Royster Scale. That scale having been suggested at that time for application in the Southeast.

When the carriers' tentative figures were submitted to the shippers, it was understood that there would be further conferences as soon as the shippers were prepared to meet the carriers. However, they have never suggested a conference to dispose of the matter since that time, and we naturally assume they have not been able to get together. I will say that in addition to submitting the figures in connection with the rate statement, and the letter which accompanied the same to the shippers and the Mississippi Railroad Commission, we also sent to Mr. Lewis, and to the Director of Traffic, Mr. Hardie, copies with all suggestions that were made for the purpose of lining up the State and the interstate adjustments. (Tes. 314-316.)

As a matter of information, will state that the carriers cannot advance any rates in the State of Mississippi without permission from the Mississippi Commission. On Exhibit 141 is copy of the Order 4357 of the Mississippi Commission, advising the carriers to this effect, and notifying them that if this was disregarded they would be subject to fine.

The matter of revising the rates on fertilizer between [fol. 304] points in Mississippi and in the Mississippi Valley Territory, was discussed with interested shippers along our road at a conference held in Memphis on November 6th, 1924, which was attended not only by the manufacturers located at Memphis, New Orleans, and other interstate points. The conclusion reached at this conference was that uniformity in State and interstate rates was desirable, and that a mileage scale for uniform application

seemed to be the most practicable plan for readjustment of rates to bring about the needed uniformity. While there were differences of opinion as to the measure of the rates, it was the unanimous view of those present that no different scale basis should be applied on our roads and in our section than in other sections of the South.

Exhibit No. 142 contains some figures taken from the 14th Census of the United States, which are the 1920 figures. The Mississippi figures are compared with those of other Southern States. The statement shows area in square miles of the Southern States, total population, and population per square mile, and the value in dollars of the live stock, agriculture, all crops, value of manufactured articles and mineral value, and the totals of the value of live stock, agricultural crops, manufactured articles and mineral values. Of Mississippi, and other Southern States. The statistics and figures are indicative of the traffic resources of the several States, and is for the purpose of showing that, from a traffic standpoint, there are no conditions in Mississippi warranting the application of a lower level of rates than operated generally throughout the Southern States.

The situation with respect to the unsatisfactory adjustments, State versus interstate, appear to be similar to other sections of the South, insofar as Mississippi is concerned, and a revision is necessary.

[fol. 305] The general level of rates which the carriers are suggesting in the South is being explained and justified by other witnesses who will fully cover this part of the case. I only wish to add that, as shown, there are no conditions which warrant a lower level of rates in Mississippi than in other Southern States and on interstate traffic. (Tes. 316-318.)

When I arrived a day or two ago, Mr. Menzies was explaining the basis that had been suggested by the carriers, and I was in the rear of the room. I do not know whether I understood Mr. Menzies correctly or not, but something was said in response to a question by Mr. Cotterill about the classification of these various articles. And I understood Mr. Menzies to say, whether I am correct or not, that the Committee having in charge that matter, considered

the specific articles and determined the classifications, and that the suggestions followed the conclusions of the Committee. I attended several of the meetings myself, and the plan was, as I understood it, to adopt as the uniform list, the articles, or fertilizer in the Southern Territory, the basis formerly contained in the Southern Classification, which is now contained in the Exception Sheet. In other words, that was taken as the standard for uniform commodity lists in the Southern Territory, and each of the commodities was not analysed. For example, cottonseed meal was specifically mentioned. Take from our territory, cottonseed meal moves on the fertilizer rates locally between points in the South to a great extent, and where cottonseed meal is now on the fertilizer basis, of course, the rates will be changed to the same extent as the fertilizer rates are changed, but to points where we have specific commodity rates, and I will say that includes the ports and to the Ohio River Crossings and points beyond, where [fol. 396] rates are not made on the fertilizer basis, in some instances lower, and in some instances higher, and made to meet the conditions there, that the cottonseed meal moving largely for feeding purposes, and for export, it is not our purpose to revise the rates to the fertilizer basis, that is, those commodity rates on cottonseed meal, and I don't think Mr. Menzies intended that. In some instances they are higher and in some instances lower. In that connection we are proposing—that is, proposing to apply in the Mississippi Valley Territory the same basis as applied throughout the Southern Territory. We are proposing to continue the grouping of St. Louis and Louisville. That rate ought to be made by the Louisville distance. However, another witness will cover that situation. Mine was dealing solely with Mississippi. My recollection is that the Louisville distance to the Mississippi Valley would be the controlling distance.

"Q. Between the longer distance?

"A. Not necessarily, Mr. Commissioner; it is longer than St. Louis, but I do not know that it is longer than the average in the St. Louis-Louisville Group. However, as to the destinations in the Mississippi Valley Territory, the destination grouping will not be observed as heretofore.

By Mr. Martin:

"Q. Will not be observed?

"A. Will not be observed as heretofore." (Tes. 318-320.)

Now, as to the import business, I did not understand, too, that the import was involved in this proceeding, however, there will necessarily be a revision in the import rates and, we subscribe to the principle from the rate-making the ports, the distance rate is to be the governing rate, and that from the other ports the scheme of equalization as has heretofore prevailed, will be continued, and as to the specific rates, they will have to be worked out on that basis after the determination of it—that is, the specific rates will [fol. 307] have to be worked out on that basis, but the present relationship, insofar as practicable, is to be maintained between the ports for the purpose of equalization. Where the ports are equalized now, it is the plan to continue the equalization, and where they are not, we would not attempt to equalize them.

"Com. Eastman: Mr. Menzies shakes his head.

"The Witness: I don't know what Mr. Menzies has in mind, but what I have in mind at the present time, where we fix a rate—that the present plan is to fix a rate—at the present the plan is to fix a rate from the ratemaking port on that scale, which will be continued, that is, the short line mileage will undoubtedly fix the rate from the ratemaking port, and from the other ports we would carry out the same scheme of equalization as we have carried heretofore.

By Mr. Cotterill:

"Q. You mean the same principle. You don't mean the same differences that are now in existence?

"A. I will tell you about the differences, Mr. Cotterill, that would be our determination in the working out of the rates, but the principle is to be followed; yes, sir." (Tes. 320-321.)

[fol. 308] Cross-examination.

By Mr. Moore:

"Q. Mr. Sheppard, you have referred to the fact that the Mississippi Railroad Commission has from time to time in the past, established its rates on certain commodities for the purpose of development of home-grown products. Are not those rates, in every instance, for application alike over all railroads?

"A. Well now, that is a pretty big question to answer, Mr. Moore. I will answer it this way. Generally, that is true, where you have made your rates on native-grown products, you made them the same over all railroads; yes, sir."

I cannot bring to mind a single exception to that rule just now. It is only recently that the Mississippi Railroad Commission have allowed anything to the weak lines.

"Q. I say, if they do make any difference at all in the rates as between those for application to strong lines and those for application to weak lines, they would allow the weak lines the higher, would they not?

"A. I desire you to answer that question yourself, Mr. Moore; I do not know the inside of their workings."

Lately where you have prescribed differential rates, you have prescribed higher rates for the weaker lines. On the Mobile & Ohio Railroad, you will notice by referring to Exhibit 135, that the rates, generally speaking, are the same as on the Illinois Central, and the M. & O. being the fertilizer commodity rates, and the I. C. being class O. The G. M. & N. Railroad is located between the M. & O. and I. C. Railroads—that is, its line lies between them, and quite generally they have adopted in many cases, where they were able, the rates of the lines that were already established, and I don't think, in 1895, or in those days when this scale was fixed by the Commission, there was any G. M. & N.; it was not built at that time. Now, you take the N. O. & G. N.—I don't know whether you refer to that as a weak line or not, but their line lies immediately to the east of the [fol. 309] line of the Illinois Central. They parallel the line of the Illinois Central, and they adopted the same scale of rates as on the I. C., when their line was built.

They had to do that in order to serve that territory. Now, the Y. & M. V. Railroad, we have always had a way for an unusual adjustment of rates, and particularly on class rates, rates for our shorter distances on the Y. & M. V. Railway, were higher than the rates on the I. C., but for the longer distance, due to the fact that the Y. & M. V. paralleled the Mississippi River, the rates for the longer distances on the Y. & M. V., regardless of the fact that it was a weaker line, were lower than on the I. C., and it is probable that the condition had some effect on the rates on fertilizer. But, as I say, I was not able to confirm from the record exactly how these rates were made, but everything goes to indicate that they were made originally as commodity rates by the Mississippi Commission, and were subsequently converted into class O rates by one of our assistant general freight agents in working up a uniform tariff. (Tes. 322-5.)

"Now, Mr. Sheppard, is it not a fact that away back beyond 1900, sometimes the Railroad Commission suggested to a railroad to revise its rates, and they prepared a tariff and brought it up there and it was approved. The Railroad Commission did not employ any rate men at all, did they, until about ten year ago, or eleven years ago?

"A. About ten years ago is when they employed a rate man. And, while I did not attend the meetings of the Commission at that time, I understood they would do that same thing. In other words, I have understood that the Commission asked the railroad people to make them a proposition on a rate, and they would put it in without a hearing."

The only minutes of the old Commission I have read are their Biennial reports. I read there where they referred to the fact that the I. C., Y. & M. V., or this, that or the other, had submitted their tariffs, and had been approved. I tried [fol. 310] to be frank with the record. This report of 1891 said that the Commission had established the commodity rates, and that some of them had been submitted to us by the railroad company at our suggestion. In other words, they suggested that it be done, and they did it.

On the Mississippi River the boats have always held, and today hold, on to the most desirable traffic. In other words, they held on to the grain, cotton, and freight of that kind. They did not bother much with lumber, coal, etc. The Y. &

M. V. Railroad is closer to the Mississippi River than the Illinois Central.

"Q. Now, then up to the time that the Mississippi Railroad Commission revised class rates—the rates on Classes C and D—and made them the same for the I. C. and the Y. & M. V., did not the Y. & M. V. have higher rates on classes C and D, and on grain and grain products, than the Illinois Central had, although it was between the Illinois Central and the River?

"A. I could not answer as to that. I have not made that comparison." (Tes. 325-327.)

My line has never filed with the Mississippi Commission any petition to advance the fertilizer rates in Mississippi, or any protest against the present rates, of any sort. On none of the other rates in Mississippi have we filed petition, except those where we issued them under protest. The underlying purpose of this revision, as I understand it, is to harmonize the rates throughout the Southern Territory. Undoubtedly the Royster scale would increase the rates in Mississippi; you have the lowest rates in Mississippi of any other State.

"Now, what is the Fourth Section revision that you spoke of there in the Mississippi Valley? Has your line prospered under those revisions, particularly since the 1303 Docket came down?

"A. Well, I don't know that we have prospered by those revisions, no."

I don't think we are making 5¾ per cent. We are paying dividends, but I don't think that is attributable to the Mississippi Valley revision. I don't know if this 4th sec- [fol. 311] tion revision lost us any money.

"Q. Well, Mr. Sheppard, this grouping in Mississippi that is maintained there now, following 1303 adjustment, I understand it is your purpose to disregard that grouping in these fertilizer rates, and that this mileage scale will be applied uniformly, without regard to any grouping?

"A. That is what the carriers are suggesting, and is the only way they have been able to find where they could get

a uniform basis throughout the Southern Territory." (Tes. 327-329.)

By no means are the Mississippi rates higher than those of any other state in the Mississippi Valley. The fertilizer rates are lower.

"Q. Don't you know that the rates in Kentucky and Tennessee, Class O rates are no higher than the Mississippi rates on the Illinois Central?

"They are higher in Kentucky and Tennessee. I will say this, Mr. Orr, in answer to your question there, you probably have in mind mileage scale of rates, and the mileage scale of class O on the Illinois Central in Mississippi and interstate is the same. Formerly we had one tariff and that condition, as I recall it, continued until the Mississippi Commission fixed the joint line scales in Mississippi, and then we had two tariffs. But the Mississippi adjustment was the controlling adjustment, according to the record on fertilizer, and that is not only true of the fertilizer, but on our cottonseed. The cottonseed rates extend across the border."

I don't know that our tariff 131-D, general commodity tariff, names a lower scale of rates than those first columns here that I show. For 250 miles the tariff ought to name a rate of about 17¢ per 100# or $3.40 per ton for that distance. We are not proposing to except cottonseed meal from the fertilizer list. I said very specifically that where the fertilizer rates now apply on cottonseed meal, that we proposed to continue that basis. There are certain points to where it would not apply in Southern Territory. No change in those rates was contemplated. (Tes. 329-331.) [fol. 312] We did not propose to apply that change; none of the other carriers, I don't think, do. There is no consideration in this fertilizer revision to change the specific commodity rates on cottonseed meal.

Referring to Exhibit 135: I will look up those A. & V. rates for distances 5 to 75 miles and if they are wrong, I will be glad to correct it.

"Q. For your information, I will say that is a fact, that for 175 miles the rate is $1.75 a ton.

"A. Will you give me the tariff that you have there on that?

"Q. It is the tariff you have there, only another section of it."

Concerning the purpose of Exhibit 137: I think you are right that the Mississippi intrastate rates are not covered in this proceeding, but strictly speaking and under the notice from the Commission, probably the Mississippi intrastate rates are not involved. However, under the advice from the Commission it was stated that information in regard to State and interstate shipments would be expected and should be given at this time, and as we had had some complaint from our interstate shippers we thought that it would be proper, in response to the notice from the Commission, to acquaint them with the situation in Mississippi, as well as the interstate adjustment. (Tes. 331-332.)

We cannot apply whatver rates may be prescribed here in Mississippi on intrastate traffic without the authority of the Mississippi Commission, but we do hope that out of this proceeding will come a uniform basis on State and interstate traffic into and out of the State of Mississippi and between points in the State of Mississippi. If that be necessary it is our purpose to go before the Mississippi Commission and ask their authority to publish intrastate whatever scale is prescribed here; we hope the Mississippi Commission will join with this Commission, and let us go ahead and fix it up, instead of waiting for a further investigation. We are going to give all of the facts we have got right here, and we hope to straighten it up here. I am sorry I cannot tell you what we are going to do for the future, I [fol. 313] just don't know. (Tes. 333-334.)

There have been complaints by communities in other States against the intrastate rates in Mississippi. There has, so far, been no relief in the case of those complaints; I don't mean any more complaints, I mean complaints filed with the railroads. There was complaint in the case of Memphis, but they did not specifically mention fertilizer on other rates. The complaint has been partially satisfied by the State of Mississippi canceling what they call the Mississippi Classification, and the establishment of class rates in Mississippi, but there was no relief given on the

commodity rates, and the relief given on the class rates and the classification was not, as I understand it, what the interstate shippers desired, because the Mississippi level of class rates is still below the level of the interstate class rates. There have been cases where communities in Mississippi have sought relief from the intrastate rates of adjoining States and have prosecuted their complaints before this Commission and have secured relief. One I recall particularly; the Meridian case was one; the Natchez case another, and the Corinth Grocery Co. case.

This Mississippi class rates are not on the same level that this Commission prescribed in the Corinth case; the Corninth case scale only went for about 50 miles. You gave the M. & O. R. R., as I recall it, the Corinth scale for 55 miles, and yet that was a gradation of the rates made by the Mississippi Commission.

On Exhibit 139 I make comparisons of rates from Meridian to Hemlock, Miss., on the Northeastern, and to Battles, Miss., on the M. & O. with rates from New Orleans and Mobile to the same points. They are carload rates. It would be possible to have a carload movement to either of those points. I don't know the population of Hemlock or Battles; I took them because they were representative points. We did have a specific complaint from New Orleans in regard to the rates from New Orleans to points on the N. O. & N. E. versus rates from Meridian points. (Tes. 334 7.)

[fol. 314] They are representative of the points equi distant between New Orleans and Meridian on the Line of the M. & O., the railroad that was specifically mentioned in the complaint that was lodged with the railroad. Mine did not mention any points, but referred specifically to the N. O. & N. E., that is typical of the situation. I did not pick them at random. The distance from New Orleans to Mobile is 202 miles, and in order to reflect the true situation on the N. O. & N. E., I tried to get a point halfway, that was 101 miles, and that was the point that was selected; that is the reason we hit Hemlock, Miss. I have the first time ever to hear a fertilizer factory say that there is not a possibility of a movement of fertilizer to points in Mississippi. In other words, they claim they want rates to all points, that all farmers are likely to get a carload of fertilizer, and that the rates should be equalized. These are carload rates

used. The difference between you and I is just this: Population has nothing to with fertilizer. They put fertilizer in the ground, you know. In other words, there are just as many farms around a small town as there is a large town. The farmer does not necessarily live in town; he lives out on the farm.

I said this about the general commodity adjustment into the Mississippi Valley: That the rates into the Mississippi Valley on classes and commodities had never been recognezed either by the carriers or by the Commission as reasonable, maximum rates. The rate adjustment on grain and grain products is a part of the I. & S. commodity adjustment.

"Q. Is it not a fact that when the Southeastern carriers were denied Fourth Section relief on the route through the Southeast into Mississippi Valley, that the Mississippi Valley lines declined to increase the rates on grain into the Mississippi Valley, so as to kill the Fourth Section.

A. "I do not recall the Mississippi Valley lines declining to make the change you suggest. However, as the rates into the Mississippi Valley had been fixed by the Interstate Commerce Commission, in all probability we would not have changed those rates."

[fol. 315] I don't know that we would not change them. The point as to increasing the rates on grain into the Mississippi Valley territory has never been considered by me. It was part of this adjustment. We have not proposed to revise any of the commodity rates into the Mississippi Valley Territory on any of the commodities fixed by the Commission in I. & S. 1303 except that there was some suggestions for revising some of the comomdity rates for the purpose of eliminating Fourt Section departures in the Southeast on iron, and a few other articles, and those articles were revised about July 1st, 1923, and in all probability, there will have to be other revisions in those cases, but, having regard to the Mississippi Valley lines declining to revise the grain rates, I don't recall that at all. The grain rates in the Valley have been before the Commssion several times since they were fixed in I. & S. 1303, notably in the Montgomery grain case, the Nashville traffic bureau case, and the Birmingham Chamber of Commerce case. In

all of those cases the Commission said that the grain rates in the Mississippi Valley were made to meet the peculiar situation in that territory, and were not regarded as reasonable, maximum rates. Some of those have been formal expressions, and some of them are the expressions of the Examiners, not yet approved by the Commission. (Tes. 337-341.)

"Q. I stated when the Southeastern lines were denied Fourth Section relief from the rates to the territory southeast from the Ohio River and Mississippi River Crossings, from the Valley, into the State of Mississippi.

"A. I do not know that they asked us at that time to increase our rates to the Mississippi Valley. However, the rate structure on grain is interwoven in the Mississippi Valley with the Western adjustment, and I don't see how we could revise rates on grain into the Mississippi Valley, never having been a Southeastern line."

My recollection is they finally withdrew from the Valley. I don't know that they never would have taken that action if the Valley carriers thought they could justify higher level of rates from the Ohio River crossings by direct routes into Mississippi; there is a question there. (Tes. 341-343.)

[fol. 316] J. L. Sullivan was thereupon recalled as a witness and, having been previously sworn, testified as follows:

By Mr. Gwathmey:

"Q. Mr. Sheppard, you were asked on yesterday about certain rates on fertilizer in Mississippi, that the Illinois Central Railroad is said to have proposed to the Mississippi Railroad Commission in past years; I want to ask you a few questions in that connection, if you please. The lines of the Illinois Central Railroad extend from Chicago south through Memphis and Cairo to New Orleans, do they not?

"A. That is correct, yes sir."

The territory along that line in Mississippi is not productive of any very large amount of local traffic; our local traffic produced along that line is very light. The principal

production along our road in Mississippi has been for years past and is now to a large extent lumber; that is being rapidly cut out along our railroad, and there is nothing to take its place except argricultural products, and the principal agricultural product of the State of Mississippi is cotton. Mississippi, I should say does not—well, along our railroad—Mississippi produces on an average of about one million bales of cotton a year, and the other agricultural products of volume are the fruit and vegetable traffic, and that is principally in the territory south of the Alabama & Vicksburg Railway on the line of the Illinois Central Railroad; I would say that would average something like I guess about 8,000 cars a year, six or eight thousand, I would say about five or six thousand along our railroad. The vegetable producing section, the principal vegetable producing section is about 23 miles or 25 miles south of Jackson, Miss., at a point called Crystal Springs; I believe that is the principal producing section, and the vegetables produced there in the largest quantities are tomatoes. Our other sec- [fol. 317] tion is right around New Orleans; that is in Louisiana, however. Then there is really a third section in West Tennessee, that is much smaller, however, than the other two.

Crystal Springs is about 160 miles north of New Orleans.

The Illinois Central Railroad does have a large volume of through business moving through Mississippi, such, for example, as our grain business for export and things of that sort; we handle a large a large tonnage of export and import traffic through the state of Mississippi; and in addition to that, we handle a good deal of our southwestern business through the state of Mississippi in both directions. In former years, it true that there was a considerable tonnage of lumber originating along the lines of the Illinois Central Railroad in Mississippi; the principal production of yellow pine lumber in the state of Mississippi was at one time on the Illinois Central Railroad south of Jackson, between Jackson and New Orleans; we had at that time, oh, a number of large mills, all of which have cut out and left that territory now, with the exception of about two or three, there is one at Fernwood still, and one at Norfield, and one at Hammond, is about all the large mills that are located on our line, all of the balance of the mills have cut

out their timber, and the production along our railroad is very light at the present time; that is, in the pine territory. (Tes. 344-346.)

With the cutting away of the timber along the lines of the railroad, concerning the genreal policy of the Illinois Central Railroad with respect to efforts to develop agricultural production in the cut-over timber lands: The Illinois Central Railroad has for a long time had the feeling that this lumber tonnage, and has not only had the feeling, but it has seen the lumber tonnage rapidly going away from it; that is, the forests were being depleted, and every effort has been directed by our company towards encouraging the growth of agricultural products along our railroad; we have maintained a department for that purpose, to assist [fol. 318] the farmers and instruct them in what they can do with the land, and in addition to that we have in numerous cases made rates for the purpose of encouraging and in the development of the agricultural prospects along our railroad; that is particularly true in the Mississippi Territory, which we feel like is necessary to have something to take the place of this forest product tonnage which can only last a few years longer. For instance, with respect to our rates that were established on the vegetables out of that section, they were referred to by the Commission in I. & S. No. 820 as missionary rates; and I might say that in that I. & S. 820, I participated, and made a very thorough investigation of the old bases, which showed very clearly that we had made them as missionary rates, and that we had consistently maintained the low level of rates from that territory, with the idea of encouraging the movement of agricultural products from that territory and the development of that particular industry.

"Mr. M. C. Moore: May I ask what rates are those you refer to?

"Mr. Gwathmey: The rates that were before the Interstate Commerce Commission in the proceedings known as I. & S. 820; I expect you recall that case.

"Mr. Sheppard: Mr. Moore participated in it; it was the vegetable case that was heard in New Orleans and St. Louis.

"Mr. Moore: Oh, yes." (Tes. 346-349.)

The Illinois Central Railroad, pursuing that same policy, has in the past hauled considerable quantities of stable manure, for instance, out of New Orleans to Mississippi at very low rates; we maintained for years from Louisiana points into Mississippi very low rates on manure to be used for agricultural purposes, while they were not restricted that way, that was the purpose of them; my recollection is we had an old per car rate in there; those rates [fol. 319] have been revised somewhat in recent years, but they are still on a very low basis.

As to whether we have gone so far as to buy some blooded cattle, bulls, and things of that sort, and turn them loose down in that country: I don't know exactly just what the plan was, but we did have some bulls that we put into that section down in that territory, and that was with the idea of developing the live stock industry; we also had some prizes in the way of boars and things of that kind, to encourage the growth of hogs.

In the Delta section, lying north of the Alabama & Vicksburg Railroad, the principal fertilizer used by the farmers is nitrate of soda; that is practically all they use.

My information is that nitrate of soda is a very expensive article, that it is not only a fertilizer, but that it is used for many other purposes; for example, on our own railroad, we have rates into the North that are much higher than fertilizer, and we feel like that basis is entirely proper on nitrate of soda; it goes up there for the manufacture of powder and articles of that kind. This nitrate of soda in the Delta section is used exclusively in the growth of cotton. I have no information as to the approximate amount that the farmer uses per acre; I have heard it said that it required about 100 or 150 pounds to the acre, but I don't know that sufficiently to testify to it here.

It is my information that nitrate of soda ordinarily sells around fifty or sixty dollars a ton.

If the cotton farmer in Mississippi uses 100 pounds of nitrate of soda per acre, and if the freight rate on that nitrate of soda from New Orleans or wherever it comes from should be say $3.00 per ton, that freight rate in the cost of the nitrate of soda used by the farmer on an acre would amount to 15 cents.

As to how I figure that: $3.00 a ton, as I understood you to say; and 100 pounds to the acre, I divided the $3.00 by 20, and got 15 cents as the cost of it. The total freight [fol. 320] charge on that fertilizer would be the equivalent of 15 cents per acre.

"A. Yes sir. Mr. Gwathmey, in the start of your questions, or statements, you said something about our proposing some rates to the Mississippi Railroad Commission on fertilizer.

"Q. I said it had been suggested by Mr. Moore on yesterday that you had proposed rates in the past on fertilizer, that was my understanding of the trend of your testimony; I may be wrong.

"A. No, I wanted to correct that statement. The only rates we even suggested in Mississippi were the rates growing out of the conference with Commissioner Lewis at Jackson, Miss., in 1923. I did say that the old records show that our fertilizer rates in Mississippi were fixed by the Mississippi Railroad Commission, and that an examination of the Commission's report was not clear as to whether the rates had been suggested by the railroad or fixed by the Commission, the report said that in some instances the rates had been fixed by the Commission, and in other instances were fixed by the carriers at the suggestion of the Commission, and I didn't want to leave the impression that we fixed those old rates." (Tes. 348-351.)

The Illinois Central Railroad has in the past possibly made low rates on animal manure out of New Orleans into the farming sections called missionary rates—some of them.

Concerning any other instances where any of the lines in the Illinois Central System have made low rates on fertilizers or fertilizer materials of that character: I think some of the other roads in that section I believe—I am not right sure about that, but I think the Louisville & Nashville Railroad had some special rates out on their road on manure.

I don't recall any on any other kind of fertilizer on the Illinois Central just at this time.

I don't know that so far as manure was concerned, the road was convinced that rates of that character—low missionary rates, would be of substantial help to the farmer,

[fol. 321] but it was represented to the roads that that would encourage the development of agriculture along our road, and the rates were established with that end in view. The rates were established voluntarily, and while I am not in a position to say definitely that that controlled, I would imagine it would be more or less of an experimental nature; in other words, frequently it is represented to us that certain things would happen if certain things are done by our road, and we establish the rates more in an experimental nature, rather than with the idea that we are being convinced that such things will happen.

What we did in that case, we published specific rates on just animal manure, which were on a lower basis than the normal fertilizer rates.

I am not sufficiently familiar with the values of manure as compared with other fertilizers, to be able to answer the question as to whether there is anything in the nature of animal manure, or in the nature of its application to the land or its use in connection with the producing of the crop, which would make a relatively low rate on animal manure of more importance to the farmer than a relatively low rate on other kinds of fertilizer. There is this point in that connection I will say that there is a large supply of animal manure at New Orleans, and they have had in times past, I don't know whether that is true now or not, difficulty in disposing of it, and the manure could be obtained almost for the cost of loading the material.

"Q. Well, translating the freight rate into dollars and cents per acre, would a reduction in the freight rate in the case of animal manure be of more consequence in terms of cost per acre to the farmer than a reduction in the rates on other kinds of fertilizer?

"A. Well, you mean taking into consideration only the freight rates?

"Q. Yes.

[fol. 322] "A. Well, I don't know about that; it would depend altogether on what the reduction was; of course, an equal reduction in the freight rate on the two characters of fertilizers would of course reflect the same per acre cost on both.

"Q. But you did establish a low rate, what you considered a low rate on animal manure for the purpose of giving some help to the farmers along your line?

"A. That is my recollection of the basis, Mr. Commissioner."

If I understood the Commissioner's point right, it was this, that if there were a reduction made in the rates on fertilizer, and a reduction made in the rates on manure, what would be the difference, that is as reflected per acre in the cost of fertilizing an acre of land; of course, as I saw that, if the reduction was exactly the same, so far as the freight cost would be concerned, it would be bound to be exactly the same freight cost to the farmer; in other words, I mean this, if you reduce the rate on fertilizer 20 cents a ton, and you reduce the rate on manure 20 cents a ton, and it required exactly the same amount of fertilizer as of manure, why of course the freight cost of the fertilization would be exactly the same; but I am not sufficiently familiar with the amount of fertilizer to be used per acre or the amount of manure to be used per acre, to tell you whether it would be exactly the same or not.

By Commissioner Eastman:

"Q. I will tell you precisely what I had in mind in that question; exhibits have been introduced, the purport of which is to show that any reduction in freight rates on fertilizer would be of such slight effect, translated into dollars and cents, as to be inconsequential so far as the farmer is concerned; now, it seemed to me that your statement that you reduced the rates on animal manure for the benefit of the farmer was to a certain extent inconsistent with that position in regard to the inconsequentiality of such reductions.

[fol. 323] "A. Well, as to just what the consequences would be to the farmer, I don't know, but it had been represented to us that if the rates on manure were reduced, it would be of help to the farmer."

I am not sufficiently familiar to answer that if the farmer in the use of fertilizer were to use enough stable manure per acre to get the same plant food value that he would out of commercial fertilizer, he would have to use about twenty or twenty-five times as much stable manure as he would commercial fertilizer to get the same result on an acre of land. (Tes. 351-355.)

I would imagine, however, that with the very low value of manure, that it is a fertilizer from which you would not get a result as favorable as you would from an article that would sell for from thirty to forty or fifty dollars a ton, that looks to me like a correct conclusion, but I don't know that, because I don't know the food value, the plant food value of stable manure and acid phosphate and those other things.

Mississippi is still capable of a great deal of development in agriculture and horticulture, and we hope it will have that development. The Illinois Central Railroad maintains a department for the purpose of encouraging those things along its line. That is true not only the larger, but the smaller lines in all sections.

The carriers have recognized not only the soundness, but the necessity of the policy of doing all they can reasonably to encourage the development of agriculture. I would say that it has been represented to us that the use of fertilizer in Mississippi would encourage the development of the agriculture in that state. An adjustment of railroad rates so as to encourage that would be carrying out a policy on which the carriers have been engaged to some extent; we have to some extent been making rates in that way.

[fol. 324] "Q. In other words, the carriers by their own policies heretofore, have really indicated that purpose and intention, and the Smith-Hoch Resolution was a sound proposition economically?

"A. No, sir, I don't think so; in fact, I don't know, I say I don't think so, I would like to qualify that by saying that I don't know much yet about the Hoch-Smith resolution."

I have read it but still I have not been able to grasp it as yet but I will say this in response to your question on that point, that about developing and making rates to develop the growth of agricultural products, there are varying opinions as to what is necessary, and you have got to take into consideration the varying levels in the uses of fertilizer, and you take the state of Mississippi, which consumes approximately 200,000 tons of fertilizer a year, and it doesn't seem to me that there should be any lower level of rates in that state to encourage the use of fertilizer than there would in the other Southern states, where there is probably a like need for development, and where under the existing rates, which are in many cases much higher than Mississippi, there is a much larger consumption of fertilizer; for example, in the Carolina territory, I have been told that the consumption is around a million tons a year.

"Q. I did not have in mind, Mr. Sheppard, the difference in the level of the intrastate and interstate rates; my question was based on the whole proposition at large; I did not have in mind even the difference between the interstate and intrastate rates.

"A. I thought you had in mind something about what the level of the rates should be." (Tes. 356-358.)

By Mr. Quirk:

"Q. Mr. Sheppard, isn't the sum and substance of your testimony that, after all, you believe that there should be a local or special treatment of the rate situation dealing with commodities such as fertilizer?

[fol. 325] "A. Well, there have been in the past, Mr. Quirk, and there may be to an extent yet, but the conditions in the South are now such as that I feel that it is difficult to segregate any particular section and say that that section should be accorded any special treatment in the way of fertilizer or other rates; in other words, the conditions generally throughout the South are about the same."

I don't know whether North Carolina is the leading fertilizer state of the country, but my recollection of some figures that I saw recently, I don't know whether they

were accurate or not, was that North Carolina consumed over one million tons of fertilizer, and that is I would say a pretty good consumption.

I am not sufficiently familiar with the use of fertilizer, but I would naturally conclude that it would take a great deal more manure than it would of nitrate of soda to get the same results. The movement of stable manure as compared with the movement of fertilizer is practically negligible; in other words, the movement of manure is very small. It was then we made those rates; always has been and is still very small. (Tes. 358-360.)

"Mr. White: I would like to ask one or two more questions. Mr. McGehee has brought out a comparison of the use of fertilizer in North Carolina and that in Mississippi; now, are you familiar with the conditions in North Carolina so as to be able to determine the difference in the two states?

"Mr. Sheppard: You mean as to the consumption of fertilizer?

"Q. No, generally, what are the conditions that might affect it?

"A. No, he asked me about the consumption in the two states, as I understood it."

I don't know how much more money North Carolina expends on education per year than Mississippi; but Mississippi has a pretty good record for education. I do not know how much more money North Carolina has invested in good roads than Mississippi. I don't think those other general expenses would have to be taken into consideration in connection with the difference in the use of fertilizers; in other words, as I understand it, the consumption of fertilizer is in the agricultural pursuits, and probably Mississippi, if it has got as much land probably as North Carolina, or put in square mile area here, North Carolina has a square mile area of 48,740 miles, and Mississippi 46,362.

[fol. 326]

"Q. Mississippi has a much higher percentage of negro population than North Carolina, hasn't it?

"A. Well, the negro is used largely in the agricultural development."

The negro as a rule does not determine how much fertilizer you will put on the land.

Referring to my comparison of the consumption of fertilizer in Mississippi with that consumed in North Carolina, and whether I know how the value of the agricultural crops per acre of the two states compare: I haven't got the value per acre; my Exhibit No. 142 shows the value of agricultural products in Mississippi according to the census report for 1920, was $336,207,156.00; and North Carolina was $503,229,313.00. I do not know how the cultivated acreage compares.

Referring to my answers to the questions of Mr. Gwathmey about the production of tonnage in Mississippi, and my statement of the decreasing movement of forest products, and the fact that we have been hearing for a good many years about that fast approaching exhaustion of the timber supply, I know that the tonnage of forest products moved by the Illinois Central Railroad from Mississippi during 1924 compared with twenty years prior to that date would be less; a good deal less, that is originating on our road. I haven't the figures in my mind, but I do know this, as I stated in reply to Mr. Gwathmey's question, we [fol. 327] had any number of mills, I can't give you the number of them, between Jackson, Miss., and New Orleans on our road twenty years ago and prior thereto, and now we have only three large mills as I recall it. (Tes. 360-363.)

Practically all of the large mills are out of business. I would not say that there is a great deal of timber produced all over that state, some of it is lumber, and some of it is in the form of logs and other forest products, that are shipped now from little stations that didn't use to ship, and a great deal more of it is hardwood than used to be the case the hardwood section on our road, the principal hardwood section, is in the Delta section, and the lumber traffic in that territory is being rapidly cut out, too; it has been cut out very rapidly in the last few years. However, we find this, that when the price of lumber goes up, that very often they bring in logs from stations, they find them out and find it profitable to cut the trees and bring them in; but the tonnage that we haul is decreasing, that

is locally from points on the Illinois Central Railroad, now, our big lumber tonnage today comes from points on our connections.

I would say that from Jackson, Miss., proper, while there is some lumber tonnage manufactured from logs brought into that point, that the larger part of the tonnage at Jackson I would think would be the pine lumber that is drawn in and dressed and reshipped, that would be my estimate, I don't know. I do know that there are some hardwood logs brought into Jackson, and in fact they are not only manufactured into lumber, but they have a stave mill there, and I don't know whether you manufacture boxes or not, I believe you do, I am not sure, but there is some of that tonnage.

"Q. Yes, sir. Now, then, about the vegetables; isn't it true, Mr. Sheppard, that there are vegetables produced [fol. 328] all the way from immediately south of Jackson, and even some north of Jackson, to the Louisiana-Mississippi state line, and also a considerable production on the Y. & M. V. Railroad; isn't Centerville, Miss., the center of that territory?

"A. Well, I will say this, Mr. Moore, that Crystal Springs, which is 23 miles south of Jackson, and Hazelhurst, Miss., 34 miles south of Jackson, that with the exception of those two points in the state of Mississippi, there is very little production of vegetables, there is some." (Tes. 363-365.)

There is considerable production at Gallman, Brookhaven, and Blackwell, but nothing to compare with Crystal Springs.

"Q. Crystal Springs and Hazlehurst are the two large shipping points in that section?

"A. Centerville and Utica, on the Y. & M. V., and one other point that I don't recall, Fayette, I think that is the point, they ship fairly good quantities of vegetables, but when you pass those points, the movement is small."

There is developing a considerable development of the vegetable industry in and around Jackson; I haven't the fig-

ures that were shipped from there last year, but when you get north of Jackson, on the Illinois Central Railroad, you have got practically no vegetables at all in the State of Mississippi, and on the Y. & M. V. you haven't got any; in other words, there might be a few cars from up there around—what is that point—Gluckstadt or Madison, as I say, but it is of little importance, after you get north of Jackson, you haven't got any vegetables on the Illinois Central, I would like to see some along there, we are doing everything we can to encourage the development, but they are just not there.

Mississippi does not by any means produce all of the grain and hay and other feed stuffs that it consumes; we bring in the other stuff that they consume from other states; we get that tonnage.

[fol. 329] As to whether it pays us just as well to haul the traffic of the same character in one direction as the other, at the same rates: I would answer that question in this way, if the rates are the same in both directions, of course our revenue would be the same, but nevertheless we would be benefited very greatly by a greater development of agricultural products in the State of Mississippi.

I do not know how the gross earnings of the Illinois Central Railroad per mile within the state of Mississippi for the year 1923, which are the last figures available, compared with the average earnings of the Illinois Central Railroad south of the Ohio River; I haven't seen the Mississippi figures segregated from the system as a whole. Probably my company reports them to the Mississippi Railroad Commission, but I haven't seen them.

"Q. You don't know, then, that they are greater, your earnings per mile in Mississippi are greater than the average for the system?

"A. Certainly not for traffic orginated in the state of Mississippi.

"Q. Well, that may be true, but if they haul it into Mississippi, it is just about as profitable as if they haul it out?

"A. I will go further with my answer, and say that on traffic orginated or delivered within the state of Mississippi, it would not be." (Tes. 365-368.)

I don't know that in every state, in figuring on traffic density and earnings etc., it is customary to take into consideration the trans-state traffic as well as the inter and intrastate traffic.

"Q. Mr. Sheppard, referring to the question of Mr. Gwathmey about fertilizer rates, he referred to a rate of $3.00 per ton on nitrate of soda to the Delta points, have you any such rate as that from New Orleans; I assume he was referring to the rates from New Orleans?

[fol. 330] "Mr. Gwathmey: I just used that as illustrative, I had no particular rate in mind.

"Q. And you drew the conclusion that it would be 15 cents per acre cost to the farmer.

"Mr. Gwathmey: If I had taken $1.50, it would have been half that much; I simply used that figure as illustrative.

"Mr. Sheppard: I think they can get up into the Delta section with nitrate of soda for probably—they couldn't get there for $3.00 a ton, but they could get there for $3.50 or $4.00 a ton."

My recollection is that our rate to Jackson, Miss., on imported fertilizer from New Orleans probably it would figure around $3.20; if I had my papers here, I could probably give you that positively.

"Q. Mr. Sheppard, referring again to that matter of tonnage produced in Mississippi and brought into and consumed in Mississippi, you referred awhile ago to the consumption of fertilizer in Mississippi of probably 200,000 tons; do you know whether or not the figures for last year, 1924, were something over 316,000 tons of mixed fertilizer, and that that does not include the cottonseed products which are used very largely for fertilizer? Cottonseed meal is a complete fertilizer, is it not, and used as such?

"A. Well, answering the first part of that question, I haven't seen the figures for 1924; it is my recollection that those figures that I was talking about, 200,000 tons, were for 1923. Now, with respect to the cottonseed meal being a complete fertilizer, it is I have been told a fertilizer, and it is

also a feed, and quite generally it is shipped as a feed, that is it is used for feeding purposes."

I don't know that it can be used as a feed, just straight, without being mixed with other ingredients; I am not suffi- [fol. 331] ciently familiar with that to know, but it is a feed. My recollection is that years ago we used it as a feed, I don't know how they are using it now, they fed the cows with cottonseed meal. As I say, I haven't had any experience in recent years, but I have fed some cottonseed meal to cows, that has been quite a while ago, though. (Tes. 368-370.)

Mississippi's cotton production for 1923-24 was about eleven hundred and some odd thousand bales; that would produce 550,000 of cottonseed, two-thirds of the tonnage being cottonseed; my recollection is that that is about the ratio. The cottonseed meal and hulls would be about something like 80 per cent of the tonnage of the cottonseed, so that there would be about four hundred and forty or fifty thousand pounds of cottonseed meal and hulls. That tonnage is all reshipped or shipped from the points of production; it is shipped to the oil mill points, and then the product shipped out from the oil mill points.

As to whether a good deal of that goes north over our road, out of the state: In the cotton case, you will recall, I think it was the position of the Mississippi Commission, and it is undoubtedly correct, that a good deal of cotton and cottonseed was hauled into the points, we were talking particularly of cotton at that time, I mean hauled in by wagon, and did not pay a freight charge. But it is true that there is a considerable volume of the cottonseed moved in by rail. Now, as to the consumption of the cottonseed meal produced in the state of Mississippi, a large part of that meal goes to the territory north of the Ohio River and to the Eastern Trunk Line Territory, where it is used for feeding purposes. Normally a good deal of that cottonseed meal goes for export; in other words, a very small part of it I would say would be consumed within the state of Mississippi or in the Southern Territory. We haul the cottonseed in [fol. 332] some instances to the mill, in some instances it is hauled by wagon to the mill; of course, the product that is shipped out, we handle that product from the mill, some of

it is moved out locally and consumed locally. That is Mississippi tonnage, though, both movements. As to whether that tonnage probably accounts for the fact that our earnings there are so heavy: I want to be entirely frank; I think Mississippi adds to the earning power of the Illinois Central Railroad, but on that point we must not overlook the fact that the producing power of the state of Mississippi is small as compared with the other states. I want to give Mississippi all the credit she is due, understand, I don't want to detract from it in any way, we think it is a great state, and we want to see it developed. I haven't any exact figures on the local production in any state; you can only go by this, you are speaking there of cottonseed meal, which would be a manufactured product, but you take my Exhibit No. 142, and you compare your manufacturing value in the state of Mississippi with the manufacturing value in the other southern states, and you can't help but see the marked difference between Mississippi and the other southern states, which indicates that the production of manufactured articles in the state of Mississippi is very much less than in the other Southern states. (Tes. 370-373.)

"Q. Well, of course, Mississippi is more of an agricultural state than many other southern states.

"A. Well, take it now on the ground of agriculture, the exhibit also shows that, and you compare your agricultural products in the state of Mississippi, your value of them, with the value in the other southern states, and while the difference is not as marked, Mississippi is also very much lower than the other Southeastern states.

"Q. But what I had in mind was the figures that would reflect the actual tonnage produced in Mississippi and the [fol. 323] other states.

"A. Well, this would reflect it, it doesn't reflect it in tons, it reflects it in dollars; in other words, I would say that your value of your cotton in Mississippi is probably higher than in a good many of these southern states, that would make that agricultural value more than their agricultural value of cotton; in other words, you have the longer staple cotton in the Delto section, which is more valuable than the shorter staple that comes from other sections of the state."

They produce long staple cotton in other states, but I

think Mississippi has the advantage in the production of the long staple cotton.

As to how our rates on fertilizer in Mississippi compare with the fertilizer rates we maintain on the remainder of our line in the south: I tried to make that point clear yesterday; taking our mileage scale rates, we formerly had one mileage scale, that applied both state and interstate, and our mileage interstate rates, which move practically no fertilizer, are the same as or about the same as the Mississippi state rates, in fact they were the same, the Mississippi Commission having fixed the state rates, and as I explained, the record showed that years ago they revised those rates, and made one scale and put them all in Class O; the Class O basis applies on the interstate scale and on the intrastate scale, but those rates, the interstate mileage rates moved practically no fertilizer. Now, as to the intrastate rates that do move the fertilizer, the rates in Mississippi are very much lower than the interstate rates. (Tes. 373 375.)

I said that from the best information we could obtain the Mississippi Railroad Commission fixed our rates on fertilizer in Mississippi; the records indicated that.

I said this, I want to be entirely fair about it, that I searched the record to find out where we got the rate, and [fol. 334] I found this old record made by Mr. Hurlbut, where he said he had taken some rates that had been fixed by the Mississippi Railroad Commission, and that he converted them into Class O rates, he enumerated a lot of commodities, and said how he got them, but he wasn't very clear, there was no record or reference to any order of the Commission, or date, or anything of that kind that I could put my hands on, so then I went to searching the reports of the Mississippi Railroad Commission to find out what I could about that and prior to that date, where the record had been made by Mr. Hurlbut, and I found in the Commission's reports where they said they had fixed them, or else that at their suggestion the railroad company had fixed them, which was one and the same thing.

"Q. Yes, well, if the Commission did or had fixed those rates, Mr. Sheppard, and Mr. Hurlbut and your company spread those rates all over the Southern System, they must have thought they were about proper.

"A. No, I don't think so, Mr. Moore, for years we have tried to maintain one scale state and interstate, and we still try to do that on our railroad." (Tes. 375-377.)

I couldn't find that those rates were in force and being applied prior to the date of the report that I am talking about; my chronological history, as long as I could trace them back in chronological order, ran back to 1897 on one road, and 1901 on the other road, I couldn't find the rates back of that time. Now, if the records of the Mississippi Railroad Commission show that that is not true, of course I would like for it to be shown in this case, because I don't want to leave the Commission under any erroneous impression; we were called upon to come here and show what we could about the adjustment of rates on fertilizer, and I was giving all the information I have been able to develop.

[fol. 335] "Commissioner Eastman: Mr. Moore, the facts that you ask about with respect to the amount of improved farm land in the various states, and the value of farm crops per acre, is given on Exhibit No. 10. And by the way, Mr. Sheppard, that exhibit is taken from the 1920 Census, just as your Exhibit No. 142 is, and the value of the farm crops is given and is shown in the case of Mississippi as being $193,000,000.00 sold in 1923 and $172,000,000.00 sold in 1920. Now, you show $336,000,000.00 for agriculture, all crops; is there a difference between the designation 'Agriculture all crops,' and 'farm crops'?

"Mr. Sheppard: There must be, Mr. Commissioner, from these figures that you have read; my recollection is that these were prescribed just as I have described them in the Census report, as 'agriculture all crops'; now, just what it embraced is not stated, it did not embrace livestock.

By Mr. Moore:

"Q. It did not embrace livestock?

"A. No, livestock is separate and shows $134,000,000.00.

"Commissioner Eastman: There must be some discrepancy there, I don't know how it is caused. Are there any further questions for Mr. Sheppard?" (Tes. 377-378.)

"Commissioner Eastman: The intrastate rates in Mississippi are not in issue in the sense that we could make

any order with respect to them in this case, but we stated in the notice with respect to this proceeding, following the precedent set in the class rate case, where the intrastate rates were also not in issue, as follows: 'While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can fairly and appropriately be used as a basis for achieving harmony between the interstate and intrastate rates will be kept constantly in mind.'' With that end in view, that is with the end of fixing interstate rates which can fairly and appropriately be used as a basis for bringing about harmony [fol. 336] between the two classes of rates, testimony relating to the intrastate adjustments will be freely admitted.

''Mr. Heyward: That was my understanding, Mr. Commissioner, but some question had arisen among our Mississippi shippers as to the propriety of an order from the Commission on this record; I did not understand that the Commission could or would enter an order affecting the Mississippi intrastate rates on this record.

''Commissioner Eastman: No sir, the issues are not so drawn that we could make any order on this record.'' (Tes. 379.)

R. A. Chadwick was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

I am connected with the Traffic Department of the Mobile & Ohio Railroad as commerce agent. I have been connected with various southern lines in traffic capacities for about thirty years.

As to the feature of this rate situation it is my purpose to deal in my testimony: With rates from the Ohio River Crossings, St. Louis, Memphis, Nashville and south ports, to points in the Mississippi Valley Territory. In order to show how the present low rates on fertilizer from Ohio and Mississippi River Crossings, Memphis, Nashville, St. Louis and related points, and from Gulf Ports to points in the Mississippi Valley were brought about, I want to give a brief history of these rates.

Prior to the Commission's decision in the investigation known as "Fourth Section Violations in the Southeast," 30 I. C. C. 153, decided April 13th, 1914, there were numerous fourth section departures in connection with the class and commodity rates from Ohio and Mississippi River Crossings, Nashville, St. Louis, and related points to points in the South, including the Mississippi Valley. The greatest departures in the Mississippi Valley were at Mobile, [fol. 337] New Orleans, Natchez, Greenville, Memphis, and other points on the Gulf of Mexico and the Mississippi River, to which subnormal rates were made to meet water competition. There were also fourth section departures at Meridian, Jackson, Greenwood, and other interior points in Mississippi to which the rates had been depressed, not by direct water competition but by the effect of the low water competitive rates to nearby points. For example, the rates from Ohio River Crossings to Jackson, Miss., which is 44 miles east of Vicksburg, were depressed by the low water competitive rates to Vicksburg and the low Mississippi intrastate rates from Vicksburg to Jackson; and as it has always been the policy of the M. & O. Railroad to maintain rates from Ohio River Crossings to Meridian not higher than to Jackson, the Jackson rates were extended to Meridian, 96 miles east of Jackson, while higher or normal rates were maintained at intermediate points.

In its decision in "Fourth Section Violations in the Southeast," the Commission granted the carriers authority to maintain lower rates from Ohio River Crossings and related points to Mobile, New Orleans, Memphis and other Gulf and River points than to intermediate points, on account of water competition but denied authority to maintain lower rates to Meridian and Jackson than to intermediate points, and at the same time held that the rates to the points intermediate to Meridian and Jackson were not unreasonable.

As a result of the Commission's order in that case the carriers made a comprehensive revision of their rates on classes and numerous commodities from Ohio River Crossings and related points to all points in the South, including the Mississippi Valley. This revision was accomplished by making both advances and reductions—advanc

ing the rates to the depressed points and reducing the intermediates. (Tes. 380-382.)

[fol. 338] The revised class rates were made effective January 1st, 1916, and the commodity rates were revised thereafter, from time to time as the work of revision proceeded. Not all of the commodity rates were revised as the work had not been completed when the government took control of the railroads and this work was discontinued by order of the Director-General. Fertilizer was among the commodities that were not revised.

In 1919, during the period of Federal Control, separate complaints were filed by the Meridian Traffic Bureau of Meridian, Miss., and Hanna Distributing Company, of Jackson, Miss., in which it was alleged that the class and commodity rates from Ohio River Crossings, St. Louis, Chicago and related points to Meridian and Jackson were prejudicial to those points and preferential of New Orleans, Mobile, Vicksburg and Natchez, the rates to Meridian and Jackson being higher than to the other points named. At the hearing of these cases the Director General made no defense to the charge of discrimination and confined his testimony to showing that the rates to Meridian and Jackson were not unreasonable. The Commission's report in these cases (which were disposed of by one report), is 57 I. C. C. 197, decided February 10th, 1920. In that report the Commission held that conditions did not warrant a continuance of Fourth Section relief at Mobile, New Orleans, Memphis and other Gulf and River points, but issued no order in connection therewith, stating that the revision that would be necessary to comply with its order in the Memphis-Southwestern Investigation (Docket 9702) would remove the cause of complaint in these cases.

As a result of these cases, the carriers in the Mississippi Valley territory made a complete revision of their class and commodity rates between Ohio and Mississippi River Crossings, St. Louis, Chicago and related points and points [fol. 339] in the Mississippi Valley, both southbound and northbound. As a general basis for the revised commodity rates, the carriers first decided to make the rates from Louisville to Memphis the same as the existing rates from Louisville to Birmingham, but not higher than from St. Louis to Little Rock. Furthermore, in order to avoid

Fourth Section violations it was necessary to make the rates from St. Louis to Corinth, Miss., not higher than from St. Louis to Sheffield, Ala.; from St. Louis to Vicksburg not higher than from St. Louis to Monroe, La., and other points immediately west of Vicksburg; St. Louis to Natchez, Miss., not higher than from St. Louis to Vidalia, La.; from St. Louis to New Orleans not higher than from St. Louis to points immediately west of New Orleans. Having determined the key rate in this manner, rates to and from other points were made to bear the same relation to the key rate as existed in the First Class rates. However, after we decided upon the basis of making commodity rates from Louisville to Memphis the same as from Louisville to Birmingham, the First Class rate from Louisville to Memphis was changed from 144 cents to 136 cents and the commodity rates originally determined upon were correspondingly reduced. At that time, the rate on fertilizer carloads, from Louisville to Birmingham was 475 cents per ton, which, under the basis I have outlined made the rate from Louisville to Memphis 23 cents per 100 pounds which was the basis for the fertilizer rates proposed by carriers from Ohio River Crossings, St. Louis, Chicago and related points to all points in the Mississippi Valley. The rates so revised were published to become effective March 1st, 1921, but were suspended by I. & S. Docket 1303.

After an exhaustive hearing under that docket, the Commission prescribed specific rates on certain commodities and provided that the rates on commodities not specifically provided for should be 85 per cent of the suspended rates. [fol. 340] This case is reported in 64 I. C. C. 306 Part 2. In its report the Commission fixed the rate on fertilizer, carloads, from St. Louis to New Orleans at 29 cents per 100 pounds instead of 32 cents proposed by carriers, and required that rates between other points be made to conform to the relationship used by the carriers in the suspended rates. Rates revised in accordance with this order were published effective April 1st, 1922 and are, with a few slight exceptions, in effect today except as reduced 10 per cent in 1922. (Tes. 382-385.)

That the Commission did not, in that case, fix these as reasonable rates is amply supported by the record in that and subsequent cases which need not be referred to here.

As I have shown, the fertilizer rates were not revised following the Commission's decision in "Fourth Section Violations in the Southeast" decided in 1914, and at the time of the Commission's decisions in the Memphis-Southwestern Investigation and the Meridian-Jackson cases those rates reflected the old basing point system of making rates that was condemned by the Commission in Fourth Section Violations in the Southeast.

(Certain statements were thereupon received in evidence, and marked "Carriers' Exhibits Nos. 143 to 148 inclusive, Witness Chadwick")

Exhibit No. 143 is a map on which I have outlined the Mississippi Valley Territory. The red line indicates the boundaries. As shown, the territory is the Ohio River from Paducah, Ky., to Cairo, thence down the Mississippi River to the Gulf, and north of the Gulf of Mexico and on and west of the Mobile & Ohio Railroad from Mobile through Meridian, Corinth and Jackson, to Humboldt, Tenn., thence via the Louisville & Nashville Railroad to Paris, Ky., and the Nashville, Chattanooga & St. Louis Railway to Paducah.

I think that line that I gave conforms to the definition that Mr. Gardner gave the other day. I should say that [fol. 341] included in that territory are also Aberdeen, and Columbus, Miss., which are on branch lines extending east from points immediately north and south of West Point, Miss., and Pensacola, Fla.

Pensacola, Fla., while not in the Mississippi Valley Territory, is usually given the same rates as Mobile on traffic from St. Louis and Ohio River Crossings, with the exception of Cairo, from which point the rates are usually made the same as from Evansville.

Now, immediately east of the Mississippi Valley is the Southeastern Territory, the western portion of which is designated as the Montgomery Sub-territory, that is the territory immediately east of the Mobile & Ohio Railroad. (Tes. 385-387.)

I said that Evansville was grouped with Cairo to the Southeast; I stated that Pensacola took the same rates as Mobile from St. Louis and the Ohio River Crossings, except

that from Cairo to Pensacola the rates are usually made the same as from Evansville to Pensacola, and not lower than from Evansville to Mobile. To the Mississippi Valley, Evansville is grouped with Louisville, as a rule; it is not in this adjustment. In order to show the exact situation prior to the revision made in accordance with the Commission's order in the Memphis-Southwestern Investigation, the rates proposed by the carriers in that revision, the rates prescribed by the Commission in I. & S. Docket 1303, and the rates we are now proposing, I offer a series of exhibits which have been numbered from 144 to 148 inclusive. Before commenting on these exhibits, I want to explain the basis on which the proposed fertilizer rates were made. From Louisville, Ky., Evansville, Ind., Henderson and Owensboro, Ky., and Cairo, Ill., we applied the single or joint line scale for the short line distances, using whichever made lower, that is the single or joint line scale. I am now talking about the rates we are proposing in this proceeding. From Cincinnati, Ohio, Covington, Newport, Lexington and points grouped therewith, 55 cents per ton higher than from [fol. 342] Louisville. From St. Louis and group, same as from Louisville. From Memphis and Nashville, we used the single and joint line scale via the short route, whichever made lower. In arriving at those rates, we did not use the distances via the so-called relief lines, that is such as the Mississippi Central, which lines proposed to suggest something higher than the standard scale. There were a few exceptions to the mileage scale in our proposed revision, made necessary in order to avoid Fourth Section Violations, but in such instances the result was lower rates than the scale would make, and not higher; for example, the proposed rate from Cairo to New Albany, Miss., is $3.60, although the application of the Royster Scale would make $3.83. But as New Albany is intermediate to Tupelo via the Frisco through Memphis, the Tupelo rate could not be exceeded at New Albany, there are several instances of that kind, as will be seen from the exhibit, which shows the basis on which each rate was made. When we proposed rates in 9702, we grouped Evansville with Louisville except to the shorter distance points. We are breaking up that arrangement here.

Exhibit No. 144 is a six page statement showing rates on fertilizer and fertilizer materials, carloads, from Cairo, Evansville and Louisville to the principal points in the Mississippi Valley Territory, prior to the revision under Docket No. 9702, the rates proposed by the carriers in that revision, which were suspended by I. & S. Docket 1303, the rates prescribed by the Commission in 1303, and the rates we are now proposing. These different periods are indicated by column numbers 1, 2, 3, and 4 on the left of the page. All of these rates have been brought down to date; that is, they reflect the 10 per cent reduction of 1922.

New Albany, Miss., on Page 2, the rate shown as proposed from Cairo to New Albany is $3.60; the scale for that distance would make $3.83, but New Albany is inter- [fol. 343] mediate to Tupelo by the route of the Frisco from Memphis, we could not exceed the Tupelo rate at New Albany.

"Q. Well, according to this, the distance is shorter to New Albany than to Tupelo.

"A. One is a single line, and the other is a joint line haul."

This statement shows the routes, and whether single or joint line hauls were used, S represents single line, and J joint line. It will be noted that the distance from Cairo to Tupelo, 222 miles, is via the single line, that is the Mobile & Ohio Railroad, while to New Albany, Miss., the distance is only 217 miles, but it is via a joint line, two lines. Now, referring to the statement I made that the rates to Meridian and Jackson, Miss., and certain other interior Mississippi points, that the rates to those points were below normal prior to the revision under Docket 9702, I want to call attention to the rates shown on this statement on Page 3 to Meridian, Miss. This shows that the rate on fertilizer from Louisville to Meridian prior to the revision under Docket 9702 was $4.50 per ton, while from Louisville to the less distant points shown immediately above there on that next page, to Columbus, Aberdeen and West Point, they are $5.40 a ton, or 90 cents higher than the rates to Meridian and Jackson. On Page 2 are shown rates to Tupelo, New Albany and Holly Springs, $5.00 per ton, or 50 cents higher

than the rate to Meridian, although the distances to those points are from 125 to 150 miles less than to Meridian and are intermediate to Meridian on the direct routes. In the revision under Docket 9702, as shown in Column No. 2, it was proposed by the carriers to advance the rate from Louisville to Meridian and Jackson from $4.50 to $5.20 a ton, an advance of 70 cents per ton, and to reduce the rates [fol. 344] to Columbus, Aberdeen, West Point and Winona from $5.40 to $5.00 a ton, a reduction of 40 cents per ton; and to Holly Springs, New Albany and Tupelo, we proposed to reduce the rates from $5.00 to $4.50, a reduction of 50 cents a ton, notwithstanding the finding of the Commission in Fourth Section Violations in the Southeast, that those rates were not unreasonable.

This statement also shows that, while we proposed an advance of 25 cents a ton from Louisville to Brookhaven, we proposed a reduction of 25 cents to Hattiesburg and Laurel. I am calling particular attention to this situation, because it indicates that prior to the revision under Docket 9702, the rates to the interior points of Meridian or Jackson were, as I have stated, on a subnormal basis. (Tes. 387-391.)

The rates we propose are increases in all cases over the present rates, from the Ohio River. They are higher than the present rates but an examination of this exhibit will show that the proposed rates are in many cases less than we proposed in the revision under Docket 9702, which rates were suspended by the Commission.

Exhibit No. 145 is a six page statement similar to No. 144, but shows the rates from Cincinnati, Memphis, and Nashville. This exhibit shows that the rates we are now proposing from Cincinnati to all points shown on Page 1, with the exception of Memphis, which was a water depressed point, are lower than the rates in effect prior to the Memphis-Southwestern revision. It is true, however, that to points south of Memphis, the proposed rates are higher than we proposed at that time.

As to where we get the basis for our rates from Cincinnati—the 35 cents a ton over Louisville—that is the basis we applied in making rates from Cincinnati to points in Montgomery Subterritory. On an average, the mileage basis would make about 35 cents difference, that was one

reason why we adopted that 55 cents, but there were other reasons, which will be explained by a witness who will explain the Southeastern adjustment. In the Valley, we [fol. 345] simply used the same differential over Louisville as they applied to the Montgomery Territory. That will be more fully explained by a witness who will explain the Southeastern Adjustment; from the Ohio River to the Southeast.

Exhibit 146 is a five page statement showing the rates from the Gulf Ports to interior Mississippi Valley points. This shows that for distances under 150 miles, the proposed rates are lower than the present rates; for example, the proposed rate from New Orleans to Lumberton, Miss., is $2.37, while the present rate is $2.90. It is not necessary to call attention to the others, as the exhibit shows just what the comparison is.

I am speaking of Exhibit No. 146 now.

"Q. You show a present rate of $2.90 from New Orleans to Meridian, that is the wrong rate, I think that rate is $2.07 or $2.09.

"A. Well, I haven't the tariff before me.

"Q. In other words, instead of a reduction, there is an increase proposed of about 79 cents per ton.

"A. I don't know, Mr. Heyward; I will have to look into that."

Those rates shown under that Reference 3 take into consideration the 1922 reduction. All of these reflect the 10 per cent reduction. I did that to make the rates comparable. The basis for these rates is shown on Page 5, I don't think it is necessary to make any comment on them. (Tes. 391-394.)

The purpose of Exhibit No. 147 is to show that in this proposed revision, the advances that we are proposing to make from the Ohio River Crossings to the Mississippi Valley points may not be as great as to the local stations, as shown on my Exhibit to the common points. For example, as shown on this statement, the rate we are proposing from Cairo to Corinth, Miss., a common point, is $3.15, against the present rate of $2.70, or an increase of 45 cents a ton. To the first station on the Mobile & Ohio Railroad

[fol. 346] south of Corinth, that is Nabors, Miss., the present rate is $2.90, and the proposed rate $3.27, or a difference of 37 cents. Now, the reason for that is this; in this revision we are now making or proposing, we will apply the mileage scale from the Ohio River Crossings to each destination, and break up this system of grouping that is in effect today; that is, at present we have six mileage groups in the Mississippi Valley, one termed the Memphis Group, covering the Southern Railway, Memphis division, from Memphis to Corinth; another group extending from Greenville, Miss., over to West Point, Miss.; a third from Vicksburg over to Meridian; then we have the Natchez group and the New Orleans group. In these rates, we are not observing that grouping at all, we are applying the scale to each point in the valley as far as it can be done without causing Fourth Section violations. Nabors was in the Tupelo group, just immediately south of Corinth. At present, all points on the Mobile & Ohio Railroad south of Corinth and north of Tupelo are in the Tupelo group; consequently, to Nabors it is in the Tupelo group—I will have to take that back, I will have to change that; it is not in the Tupelo group, but it is between Corinth and Tupelo; under this scale, the proposed difference in the rate to Nabors will be less than the difference between the present and proposed rate to Corinth. That is also true of these other local points shown on the exhibit. As a rule, the rates to all points in a group are the same today, I don't know of any exceptions.

"Q. Well, I had understood that in groups which were fixed in the so-called Pitt readjustment, that those were the territorial groupings or groups of points and that some of the intermediate points were traded up between the groups.

"A. That is true, I think, in connection with the rates from Memphis and New Orleans, where the distances are short, we had to make some gradation, we couldn't carry [fol. 347] the Greenville rate from Memphis to our points between Memphis and Greenville, but as a rule, after you get beyond the first group, then all points between the two groups take the same rate; I don't know of any exceptions to that. The purpose was to show that the increases shown

on my Exhibits are maximum increases that would result, and that the increases to the intermediate local stations would not be so great." (Tes. 394-396.)

Exhibit No. 148 compares the rates that we propose in this revision from St. Louis to Decatur, Birmingham and Montgomery, Ala., with the rates to opposite points in the Mississippi Valley Territory. The Louisville & Nashville Railroad and the Southern Railway, operating from St. Louis and Ohio River Crossings to Pensacola, Mobile and New Orleans, pass through Decatur, Birmingham and Montgomery; consequently, it would be impossible for the Louisville & Nashville Railroad to maintain a higher rate at any of the intermediate points in Southeastern Territory than to the Gulf Ports named. Now, this shows that in this revision, the carriers are proposing to reduce the rate from St. Louis to Decatur 28 cents, to Birmingham 33 cents, and to Montgomery 54 cents, and that notwithstanding these reductions, the rate we are proposing from St. Louis to Mobile, $6.53, is not high enough to clear St. Louis to Montgomery; in other words, if the Louisville & Nashville Railroad and Southern Railway are to continue to handle traffic to Mobile or Pensacola, it will be necessary for them to reduce the proposed rate to Montgomery still further, that is, make it $6.53, or go out of that traffic. The rates from St. Louis are the same as from Louisville at present to the Mississippi Valley. That is the basis we are proposing to continue.

I called attention to Decatur, Birmingham and Montgomery—outside of the Mississippi Valley—in connection [fol. 348] with the exhibit I filed as a map, the map I filed as an exhibit. We feel that whatever scale is reasonable for application in Southeastern Territory ought to be applied in the Mississippi Valley; I don't know of any transportation or other conditions why we should have lower rates in the valley than in the Southeast. (Tes. 396-398.)

[fol. 349] Cross-examination:

Referring to Exhibit 146: The rate shown opposite Column 3 from Gulfport to Meridian is the present rate. We are now applying a rate of $3.20 a ton; the tariff authority

is shown on page 5 of the Exhibit. These are supposed to be taken from the undated series of Speiden's tariffs from Gulf ports to the Interior Mississippi Valley points.

"Q. I think you will find that that rate is nearer $2.09 than $3.20.

"Mr. McGehee: We agreed to check that, Mr. Hayward, and put it in the record."

Ordinarily the practical route from Gulfport to Meridian would be an intrastate route. I'll check the exhibit and see if I have used the wrong rates on there and make whatever corrections necessary.

Referring to Exhibit 145, showing present and proposed rates from Memphis and the purpose with reference to the rates on cottonseed meal and hulls from Memphis to the Interior Mississippi Valley points: My understanding is that the cottonseed meal and hull rates are not affected by this revision at all as to the interior, on the fertilizer basis. So that if we have specific rates on cottonseed meal and hulls from Memphis or from any other market that handles those commodities, that are lower than our proposed fertilizer rates, it is my understanding they would be continued in effect.

I understand that the Commission in Docket 3866 denied 4th section relief at Meridian as against points intermediate to Meridian and Ohio River Crossings, and that they at the same time held that the rates to the intermediate points were not unreasonable. We had no orders from the Commission to remove that departure; the carriers were directed by the Commission to make this revision as promptly as they could, and they were engaged in that work when the government took over the control of the [fol. 350] railroads, and under instructions from the Director General, all work of that kind was discontinued. I stated that we revised our class rates and a substantial number of commodity rates in accordance with the 4th section on January 1, 1916. (Tes. 398-401.)

I am offering no testimony seeking to show any differences as between the rates from the Mississippi Valley fertilizer manufacturing points into the Southeast, as compared with the rates from that territory into the Missis-

sippi Valley; our proposition is to put all those rates on the lowest scale no matter whatever justification has been offered or the Royster scale will apply with equal force to these specific rates we are now publishing between southern points.

I understand that on the Gulf & Ship Island the rate on fertilizer today from Gulfport to Jackson is $3.20 a ton; if the rate is $1.69 a ton my statement, of course, is wrong. I can't answer for the G. & S. I., but it is the expectation of the carriers generally that whatever scale is prescribed by this Commission for interstate application will be submitted to the State Commissions for authority to apply the same scale in the different states. The distance from Gulfport to Jackson is 160 miles. From New Orleans to Jackson is 183 miles, and this statement shows that rate to be $3.20.

"Q. You have $3.20 against $1.69.
"A. I don't know anything about $1.69."

As to the policy of the carriers I represent with respect to the equalization of those two rates one against the other: On domestic traffic we propose to apply the scale without any equalization, one point against another, but on the import traffic, we expect to put in rates which will equalize to a certain extent one port against the other, the deails have not been worked out yet. I am not testifying directly for the G. & S. I. All of the carriers discussed these rates, and the G. & S. I. agreed to apply the mileage scale on their line, and have stated that they would make their rates [fol. 351] from Gulfport on the Royster scale. Assuming that they get the Royster scale for the 160 mile haul from Gulfport to Jackson, as an example, the new rate for the 160 mile one-line haul would be $3.15. If that new rate will be $3.15 and your present rate would be $1.69, that is the increase between those two. (Tes. 401-405.)

(Witness agreed to check tariff for possible errors.) (Tes. 405-406.)

In working up this system of rates, we have confined our routes to routes via which shipments actually move or can move; we don't use combination on junction points where

there are no facilities for interchanging traffic; I believe that is the only exception that we make to the strict application of the mileage basis. I don't know if that is true as far as all the carriers are concerned.

This scale of rates that is proposed is not designed primarily for fertilizer as distinguished from fertilizer material; the investigation covers both. I don't know that it is intended to cover fertilizers any more than fertilizer material. Fertilizer is a much heavier moving commodity, the movement is more general. These rates I show in my exhibits apply to fertilizer and fertilizer materials—both. I can't say these rates were designed as a primary matter to move fertilizer any more than for fertilizer material. It is true that fertilizer moves shorter distances on the average than fertilizer material. I think it would be fair, with that in mind, to extend a scale that would move principally fertilizer to the movement of fertilizer material; I don't see any reason why it should not; if a scale is proper on fertilizer for 600 miles and on fertilizer material for 600 miles then the figures we have proposed for distances beyond that are also proper. Fertilizer does not move 600 miles, but that is a proper scale for that distance whether it moves or not. (Tes. 406-409.)

I couldn't say that there is any movement from Memphis to Hattiesburg, Miss. I don't suppose that there is any movement there. On the other hand there might be a movement of fertilizer material. If any fertilizer moved, [fol. 352] that fact would affect it. I don't think that all tends to show that there is a real reason for the difference in the treatment.

"Q. I notice from Exhibit No. 146, you show to Hattiesburg from Gulfport a reduction from $2.50 to $2.14, for a short haul?

"A. All of these rates were arrived at by the use of the scale."

The rates I show from the Gulf ports are not to apply on import traffic; they are domestic rates. We haven't worked out the rates for import traffic, but our general plan is to apply the scale from the nearest port, and then range the rates from the other ports so as to effect some sort of equali-

zation. In the case of Mississippi with the nearest port Gulfport or Mobile, we would base our rates from those points on by the application of the scale from the nearest port, Gulfport or Mobile. With that scale, they do not include handling charges; to the scale we would apply from Gulfport or Mobile, we would have to add the handling charges at shipside. I think those handling charges at Mobile and Gulfport are 30 cents a ton; I am not sure.

"Mr. Heyward: It isn't 30 cents, it was 70 cents."

Whatever they are will be in addition to the rates.

Generally, our present import rates from Gulfport and Mobile to points in Mississippi Valley territory include handling charges. I have made no effort to show these import rates here at all in any of my exhibits. Generally speaking, this revision we are proposing will mean a great many increases in all the rates to the Mississippi Valley, and very substantial increases over the rates that were prescribed by the Commission in 1303. In many cases, they are also increases over the rates that the railroads were proposing in 1303. Taking the carriers in the Mississippi Valley as a whole, I think they need additional revenue. The purpose of this revision is to have a reasonable and uniform level throughout the South. It was not the object of the Mississippi Valley lines to gain additional revenue in proposing this scale; it will probably give us some addi- [fol. 353] tional revenue in the Valley, but if it is a reasonable scale, we don't think that that should stand in the way of our getting it. I can't tell you offhand how the traffic density in the Mississippi Valley compares with the traffic density in the Southeast; on the Illinois Central it probably is higher, and on some of the other railroads it is lower. I couldn't say what percent of the mileage in the state of Mississippi is represented by the line of the Illinois Central; I would guess about 40%. (Tes. 409-413.)

By Mr. Heyward:

"Q. Mr. Chadwick, isn't it a fact that you do absorb your handling charges at the ports on shipments that move on the domestic rates to the territory on and north of the Alabama & Vicksburg Railroad and west of the Northeastern?

"A. I cannot say positively, Mr. Heyward; my recollection is that the rates from the ports to all points in the Mississippi Valley include the handling charges.

"Q. You are mistaken about that.

"A. I am?

"Q. Your terminal tariff provides that it does, that you shall absorb the handling charge on traffic that moves on domestic rates where there are no import rates published, and you do assess that charge at points where the terminal charges are assessed, where an import rate is published, it will result in Fourth Section departures will it not, by adding, in other words, by adding the handling charges to the import rate, you will produce a higher rate than results from the reduction of the handling charges from the domestic rate?

"A. There may be instances of that kind."

It is the present intention to add the handling charges on all import traffic under this proposed revision. I think that that will make very substantial increases in the rates to a great many points; to some points, as I pointed out, the proposed rates in the Mississippi Valley from the Gulf are reductions.

Assuming the present rates today from Gulfport are to [fol. 354] Lanier, $1.10, to Hattiesburg, to Meridian $2.00, and to Jackson $1.69 and Columbia $1.24, the figures will show for themselves what the increase amounts to; it would be the difference between the rates you have now and the proposed rates under the Royster scale; I didn't follow your figures to see what percentage it was.

We need revenue; we think we ought to have a reasonable scale whether it increases our revenue or not. I don't know about the history of these rates; I think they were put in from time to time, one point at a time, under different circumstances that possibly controlled each different rate. There is competition between all of those ports; I imagine that had something to do with those rates. I couldn't tell the reason for any particular rate in the Valley offhand. Under this proposal those rates would be increased.

We are going to break up the so-called grouping in the Mississippi Valley but to a certain extent we propose to maintain the grouping at the Ohio River crossings. Lex-

ington, for instance, would be included with Cincinnati. I don't know any reason why Lexington or other inland Kentucky cities are not entitled to their mileage or natural location to points in the Mississippi Valley and the Southeast, except that we have maintained these groups for a long period of time, and it puts the shippers at those different points on an equality; I know of no other reason. We are breaking up the destination groups, not origin groups. We are breaking up the Evansville-Louisville origin group, but we have the same Cairo and the same St. Louis-Louisville groups, with Louisville taken out, and we will have the same Cincinnati group. I stated why Lexington should take the same rate as Cincinnati.

I have never heard of a movement of fertilizer or fertilizer material from Lexington into the Valley. From the Ohio river those rates are used as factors in making rates on traffic originating beyond to a very large extent; the only movement on fertilizer rates from or through Ohio River is fertilizer material originating at points where packing houses are located. We don't reach Lexington or Cincinnati with our line. My understanding is we now absorb handling charges to Valley points. (Tes. 413-418.

[fol. 355] N. V. Hutchinson was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

My name is N. V. Hutchinson, general freight agent of the Columbus & Greenville Railway Company, with headquarters at Winona, Miss. As the Columbus & Greenville Railway is not a rate making line, we will not undertake to justify the rates to our junction points, but will rely upon such testimony as the trunk lines have submitted as to the reasonableness of the rates, etc. We will, however, endeavor to justify our Fourth Section Relief with respect to meeting the Trunk Line rates at our junction points and maintaining higher rates at our intermediate local points.

By Fourth Section Order No. 7026, dated November 3rd, 1917, the Columbus & Greenville Railway was granted Fourth Section relief and permitted to continue and es-

tablish class and commodity rates from Baltimore, Md., and related points; Ohio and Mississippi River Crossings and related points; and South Atlantic and Gulf ports, and related points to and via its junctions with other lines, the same as the rates contemporaneously in effect on like traffic from the said points of origin to the said destinations via the lines of its competitors; also to maintain higher rates to its intermediate local points on basis of lowest combination, provided that the component rates applicable between points on the applicants line used in making such combinations should not be increased except as might thereafter be authorized by some order of the Commission. Fourth Section Relief was granted on account of the unfavorable financial condition of this carrier.

[fol. 356] The Columbus & Greenville Railway is not a rate making line and consequently has no voice in establishing rates to its junction points and unless it is permitted to meet Trunk Line rates at its junction points, it will undoubtedly suffer loss of revenue which in its present financial condition will have the effect of jeopardizing its operation. Our freight trains are running light and it is very seldom that they have full tonnage; therefore, the additional cost of handling this business in addition to other tonnage would amount to practically nothing. The Columbus & Greenville Railway is peculiarly situated in this respect and careful consideration should be given to this particular feature. On the other hand, having to meet this competition at its numerous junction points, this line should not be compelled to operate the lower junction point rates at its intermediate local stations where the same conditions are not encountered.

Due to the present financial condition of the Columbus & Greenville Railway, we respectfully urge that it be permitted to continue to meet the rates of its competitors or Trunk Line rates to and from its junction points, also that it be permitted to maintain higher rates at its intermediate local points on basis of lowest combination.

As the Columbus & Greenville Railway operates wholly within the state of Mississippi, thereby being strictly an intrastate carrier, we are agreeable to adopting no less than the proposed Trunk Line single scale for interstate application between points on the Columbus & Greenville Railway, provided said scale is prescribed by the Commis-

sion, as it will at least practically maintain our present revenue.

Now, we feel like that we are entitled to and should have a higher scale than the proposed Trunk Line scale, for ap- [fol. 357] plication between points on our line, but due to the peculiar situation or location of our line with respect to keen competition there, with the large Trunk Lines which cross our line ten or eleven times, we don't feel that we can maintain and operate a higher scale than the proposed Trunk Line single scale. (Tes. 420-422.)

This road only within two years has emerged from receivership but it can hardly be doubted that if it is deprived of its present source of revenue it would revert to that condition very promptly.

In order to substantiate our grounds for the relief sought, I beg to submit my Exhibits Nos. 149 to 156 inclusive.

(The statements were thereupon received in evidence, and marked "Carriers' Exhibits Nos. 149 to 156 inclusive Witness Hutchinson.")

My exhibit No. 149 is a map on which the Columbus & Greenville Railway is indicated by the figure 13. From this map it will be noted that the Columbus & Greenville Railway connects with the Southern Railway and Mobile & Ohio Railroad at Columbus, Miss.; with the Mobile & Ohio Railroad and Illinois Central Railroad at West Point; with the Gulf Mobile & Northern Railroad at Maben and Mathiston; with the Illinois Central at Winona; with the Yazoo & Mississippi Valley Railroad at Grennwood, Moorhead, Elizabeth, Stoneville, and Greenville. This clearly demonstrates the peculiar geographical location of the Columbus & Greenville Railway with respect to strong Trunk lines. The only difference in that respect from the Alabama & Vicksburg is that we have more junctions, we are crossed more times than the Alabama & Vicksburg is, they have about one or two, while we are crossed ten or eleven times.

My exhibit No. 150 is a statement showing that the total mileage of the Columbus & Greenville Railway is 169.59. This line extends east and west across the northern part of [fol. 358] the state of Mississippi, Columbus, Miss., being its eastern terminal and Greenville, Miss., its western terminal. This portion of the state is pretty well served by larger and stronger lines.

This exhibit also shows that the total number of stations on the Columbus & Greenville Railway is 53, 10 of which are common points, 10 local agency stations and 33 non-agency stations, or flag stops. The combined population of the 10 common points is 34,237; of the 10 local agency stations 6,922; and of the 33 non-agency stations 879, making a total population of all stations 42,038. This will indicate that the section traversed by this road is very sparsely settled.

This exhibit also shows that the average distance between the common points is 23.94 miles. The flow of the large volume of traffic to and from the section of the country traversed by the Columbus and Greenville Railway is north and south. I desire to call your special attention to the fact that this road is crossed at ten different points by strong Trunk Lines which operate north and south, and these Trunk Lines naturally handle a large portion of the through traffic via their junctions, leaving the Columbus & Greenville Railway dependent almost entirely upon its short haul or local traffic. While the average distance between the common points is 23.94 miles, the average haul distance is approximately 10 miles. (Tes. 422-424.)

My Exhibit No. 151 is a statement showing the different classes and commodities handled by the Columbus & Greenville Railway during the year 1924. In the first column is shown the tonnage originating on the Columbus & Greenville Railway, and the second column shows the tonnage received from connecting lines. It will be noted of the total tonnage of 456,744 tons originating on the Columbus & Greenville Railway 12.6 per cent consisted of products of agriculture, 35.0 per cent products of mines, and 40.8 per cent of forest products. Of the total of 159,798 tons of [fol. 359] products of mines, 159,535 tons, or 99.8 percent consisted of gravel and sand, all of which moved to points in Mississippi for road building purposes on low intrastate rates.

Of the total of 57,358 tons of products of agriculture, 50,803 tons, or 88.5 percent consisted of cotton and cottonseed products (except oil). The tonnage of cottonseed oil was 3,161 tons. The products of cotton has been materially reduced in recent years due to the ravages of the boll weevil.

My Exhibit No. 152 is a statement showing the operating results of the years 1919-1924 and which is self-explanatory.

During 1922 the Railway Operating Income shows a net gain of $188,942.48. This gain was made possible by the fact that this property was operated by a Receiver who spent practically nothing for maintenance and who, because of the court's protection, was able to operate through the strike, thereby doing an abnormal business. During 1923 the net operating income was $533.16, and in 1924 $30,051.57. These amounts were earned by most rigid economy. As a matter of fact, it would not have earned these amounts had not the Mississippi Tax Commission practically exempted it from taxes. All during 1923 and 1924 its earnings were not, and even at the present time, are not sufficient to maintain the property in such condition as it should be.

This road was once owned by the Southern; owned and operated at one time by the Mobile & Ohio, up to the time it went into the hands of a receiver.

"Q. This went through the reverse process of what is in the style now, instead of being consolidated with a strong line, it was controlled by it, and then split off?

"A. Well, at that time the idea was to junk the line altogether, and the receiver took hold of it down there, and after abandoning about 100 miles of it, he made a fairly [fol. 360] good showing, and he has been making expenses ever since, barely getting by with it, and while it was the idea, I suppose, to abandon the line, it is very necessary that the road be continued for the reason that there are several inland towns there that are 10 miles from any other railroad, where there are oil mills, light plants, ice plants and various manufacturing plants there, and if the road was abandoned, they would suffer very materially, and there is no doubt but what the values of property would be decreased considerably, as well as the farm lands in that immediate vicinity." (Tes. 424-426.)

My Exhibit No. 153 is a statement showing a comparison of the present rates as prescribed under I. & S. Docket 1303 and proposed rates based on the Third Royster Scale from Cincinnati, Ohio, Cairo, Ill, and Memphis, Tenn., and New Orleans, La., to common and representative local stations on the Columbus & Greenville Railway, together with distances and routes.

We are attempting to justify the rates to our common points (as this justification will be made by the Trunk Lines), but simply show the junction points rates in order to reflect the basis for rates to our local stations, viz.: lowest combination. While the proposed rates to local stations show increases, at the same time these rates were constructed on lowest combination using the proposed Royster Scale single line for an average distance of 10 miles beyond the junction which is practically the same as the factors applicable beyond the junction used in constructing our present rates. (Tes. 426-427.)

On that exhibit, A is the common points and B are our local stations; you will find the key to it on Sheet 3. Those rates to our local stations are now made arbitraries above junction point rates; they are made on the basis of lowest combination of locals; you see, our average line haul or rate making haul you might say, is the distance of 10 miles, [fol. 361] and with the exception of one station on our line, we use 10 miles in making through rates, that is in figuring out the lowest combination from the junction. We are proposing the lowest combination from the nearest junction which makes the lowest combination. The present and proposed rates to the local points are made on combination basis. As a matter of fact, if we could apply the straight mileage to our local points under the Royster Scale, I really couldn't say that those rates would be increased above what they are now.

"Q. You can tell it in this way, can't you; here is a local point, Uporia on the first page.

"A. Yes sir.

"Q. The rate to that is $5.92, the proposed rate to Mathiston, which I presume is the nearest junction point, is $6.18.

"A. From what point, Mr. Commissioner?

"Q. Cincinnati, the proposed rate from Cincinnati to Mathiston, a common point, is $6.18, which is higher than your present combination rate to the local point; that being the case, it would look as though you would gain an advantage over the present situation even if the straight mileage were applied without Fourth Section relief?

"A. No sir, I don't think so; you take our present rate there to Uporia of $5.92, which is made on combination, $1.02 over the Trunk Line scale, that is the present rate;

well now, you take the mileage for a distance of 582 miles, and you take the rate for a distance of 582 miles, as figured there, plus $1.02, will give you the $7.20, you see that is the way that is figured out." (Tes. 427-429.)

The proposed rate from Cincinnati to Mathiston is $6.18 and that is higher than the present rate to Uporia, which is $5.92.

"Q. Now, if the straight mileage were applied to Uporia, wouldn't the rate be $6.18 or higher?

[fol. 362] "A. Well, whatever that 582 miles would make the proposed rate; no, I think it would be $6.18, it would be $6.18."

It would be higher than our present rate, but the basis we propose here doesn't reflect any increases in our factors to our local junctions, because this is the same thing that we have got in today, the same factors that we use today is what we are proposing, and the increases are brought about, I mean the increases reflected here to my local stations are brought about by the addition of the increases to the junction points. I don't know whether the Trunk Lines could afford to give us out of a joint rate of $6.18 as high a division as we now receive through our local rate. Of course, that increase is brought about there by application of that Royster Scale.

To Uporia division the rate is made on Mathiston, we get our local of $1.02, we deduct our arbitrary proportion. The Trunk Line gets $4.90 plus; it is according to where we get it, plus our percentage proportion of the through rate or the junction point rate.

"Q. Well, take from Cincinnati, you get how much out of that $5.92 rate?

"A. I don't recall now what our divisions are from Cincinnati; I say it is according to where it is delivered to us.

"Q. Well, you get $1.02 plus something, don't you?

"A. Yes sir, we get plus our percentage proportion of the through rate, the junction point rate, which makes it about two dollars, I think.

"Q. If the carriers can give you that out of the rate of $5.92, they could afford to give you the same thing out of the rate of $6.18, couldn't they?

[fol. 363] "A. Well, the way it figures out, they could, I suppose, I don't know whether they would do that or not, I don't know what they would do." (Tes. 429-431.)

My Exhibit No. 154 is a statement showing the present and proposed scale of rates for interstate application between points on the Columbus & Greenville Railway, which reflects increases and decreases. I call special attention to the fact that for a distance of 10 miles, the proposed rates are the same as the present rates, of course the increases are above that. That is the Royster Scale, what we propose is the Royster Scale, their single line, that is the one we are proposing for application between points on the C. & G.; we are really, being an intrastate carrier there, the only use we have for this scale is in making rates between our points. So far as our local rates are concerned, the state authorities have not let us charge about what we please; they have prescribed certain rates for application over our line, and in this adjustment they made down there in July, 1922 I believe, they gave us a higher scale of class rates, that is the weak lines, and we were included in the weak lines, than they did the Trunk Lines. They did not prescribe these fertilizer rates; these fertilizer rates here are the interstate rates, these are interstate rates published in our C. & G. Freight Tariff No. 221. The Interstate Commerce Commission did not prescribe those for us; that is a different scale, that has been in there for years, I don't know how long.

"Q. And I suppose, as you are a weak line, you are trying to get all the money you can, and apparently until this Royster Scale was suggested by the Trunk Lines, you hadn't thought of increasing your fertilizer rates up to that basis, had you?

"A. Well, no, we had thought about it, and I had been trying to get the rates increased up there, I had been to [fol. 364] Washington and talked to Mr. Pitt about those things, but he said that inasmuch as this 13494 revision is on, not to bother about it until that is finally adjusted."

My Exhibit No. 155 is a statement showing the average revenue per ton, per ton mile, per car mile, and per car of

the Columbus & Greenville Railway for the calendar year 1923, as compared with strong competing Trunk Lines shown thereon for the same period. This statement is self-explanatory.

My Exhibit No. 156 is a statement showing the freight proportion of operating expenses per ton, per ton mile, per car mine, and per car of the Columbus & Greenville Railway for the Calendar year 1923, as compared with strong competing Trunk Lines as shown thereon for the same period. This statement is also self-explanatory.

In view of the financial condition of this carrier, we earnestly urge that the relief sought be granted. (Tes. 431-33.)

(Statement by the Witness N. B. Hutchinson, continued:)

My Exhibit No. 155 is statement showing the average revenue per ton, per ton mile, per car mile, and per car for the Columbus & Greenville Railway for the calendar year 1923, compared with strong competing trunk lines shown thereon, for the same period. This statement is self-explanatory.

My Exhibit 156 is statement showing freight portion of the operating expense per ton, per ton mile, per car mile, and per car, of the Columbus & Greenville Railway for the calendar year 1923, as compared with strong competing trunk lines, as shown thereon, for the same period. This statement is self-explanatory.

In view of the financial condition of this carrier, we earnestly urge that the relief sought be granted.

The Gulf, Mobile & Northern is not as strong as some [fol. 365] others of them, I would not call it a strong competing line. It is one of our connections; I only showed the lines we connected with.

"Q. One of the lines that has sought the kind of relief that you are seeking?

"A. I do not know, Mr. Commissioner, whether we are going to ask for the same thing or not.

"Q. You have, in other cases?

"A. Well, I don't know whether they are on the lowest combination basis or not. They have asked, I understand, for some relief; I don't know what the base is." (Tes. 434-35.)

In conjunction with my railroad business I also operate a farm down in Mississippi—a small place down there, I don't know whether you call it a farm or a garden. It is located in Sunflower County, Mississippi, near Indianola, Mississippi, in the section know- as the Delta section. The acreage of my farm is about 400 acres.

I would say that I represent the average small farmer in that section. The principal crop of my farm is cotton. The principal fertilizer that the farmers use in my section is in the Delta section, nitrate of soda.

To explain just how the farmers in my section use the nitrate of soda in connection with the growing of their cotton crops: Well, they first bed the ground up ready for planting of cotton, and then they take a cotton planter and put the nitrate of soda in that, and run that right ahead of the cotton planter. They put the nitrate of soda down, and cover it up with the dirt, and then right on top of it they put the cottonseed in. They put the nitrate of soda in with the cotton pla-ter; that is the way the most of them do.

From 100 to 150 pounds of nitrate of soda is used per [fol. 366] acre; I don't know how much nitrate of soda the average farmer in my community uses per year. I used one year about 5 tons.

"Q. Is that fairly representative of what you use from year to year?

"A. Well, if I was going to use it it would be, I do not use it every year."

I am not using it this year. That nitrate of soda that is used in our section is shipped, principally from New Orleans. There are three or four ways by which they buy it. Some buy it through the county demonstrators of the counties in which they are located, and some buy it direct, and some from the furnishing merchants. The farmer who uses, as I say I do in certain years, about five tons of nitrate of soda on his farm—he would buy that from, ordinarily the merchant there.

"Q. Do the farmers in your section frequently buy this nitrate of soda on credit, or do they ordinarily pay cash?

"A. Some of them do; they are not ably to pay cash; get it on a credit." (Tes. 435-37.)

The difference in the price that you have to pay when you buy on credit, and the price that you pay when you buy for cash is 25 to 33⅓ per cent higher. The credit price is about 25 to 33⅓ per cent higher than the cash price; down in my section, in the Delta section. The ordinary price of nitrate of soda in my section ranges from $50.00 to $60.00 a ton. Right now I think it is close around $60.00; I understand it is about $10.00 higher than it was in the early spring. I have not bought any of it this year at all.

I could not state whether the average farmer uses 5 tons. I do not know whether the average farmer uses that much nitrate of soda or not. That is used principally by the large planters down there, and they use it anywhere from 500 pounds on up. That is the way it ranges.

[fol. 367] Assuming that the average farmer uses 100 to 500 pounds per acre of nitrate of soda—the freight rate on that will approximate about 20 to 25 cents an acre.

Based upon my observation and experience, a variation in freight rates, either up or down, had little effect upon the price paid by the farmers in the purchase of nitrate of soda—the farmer buying from the commission merchant.

If these farmers are paying from $50.00 to $60.00 a ton for nitrate of soda for use on their cotton crops, in my opinion a variation of a dollar or two in the freight rate would not influence those farmers in the amount of nitrate that they would use in a year on their crops.

As to why I did not use any nitrate this year: I will tell you, last year was a littler bit hard with me, and I did not have the money to buy the nitrate of soda, and another reason why—the principal reason is that I rent my land out to negroes, and they pay cash rent for the land, and they did not want to use it this year, so I did not force them to use it. (Tes. 437-440.)

"Q. Yes, now, may I ask you just one other question. The thought has been suggested that it is possible for fertilizer to be stored in the neighborhood of the place where it is to be used in advance of the time when the farmers are ready for it. Do the farmers in your section ordinarily buy their fertilizer when they want it; when they are ready to use it?

"A. Yes, sir; just as soon—they do not buy it until they are ready to put it in the ground, as a rule."

It is a fact that the people in Mississippi claim that the land referred to, as well as the Delta land, is among the richest land in this country. It has been referred to as [fol. 368] being that, but that is in the years past, when the Mississippi River used to overflow down there every year, and leave a rich deposit, but now it is getting like—more like the hill land, it is one-crop, growing cotton continually year after year, takes the necessary ingredients out of the land, and the nitrate of soda or some fertilizer has to be used. I do not maintain that land that only requires 150 pounds of nitrate of soda per acre, is as poor land as the average land in the South; I do not undertake to say it is the poorest land in the South. That is a mixture of soils; it is buckshot, sandy loam, what they term down there as white crawfish land, it is a general mixture. The soil runs very deep.

By Mr. Harrison:

"Q. The carriers are predicating their rates based on carload minimum of 20 tons. How does the farmer buy? Are not the carriers proposing to increase the minimum to 20 tons, and the farmer only buying 5 tons, how does he buy that way?

"A. He buys that from the commission merchant, who gets it in there in carloads and distributes it out to the smaller farmers."

I don't buy direct I buy through commission men.

In the use of fertilizers in the Delta it is largely dependent upon the sale price of the crop of the previous year, the more money they have, the more fertilizer they are going to buy, as well as anything else. That is really the regulating factor, rather than the question of rates, the amount of money they have to pay for it.

The Columbus & Greenville Railroad, or Railway, is the successor of the Southern Railway Company in Mississippi. My information is that my rails extend to the Mississippi line. I operate, though, only between Columbus and Greenville, Mississippi.

"Q. Under what arrangement is it that you operate only to Columbus, if your company owns rails to the State line? [fol. 369] Who made that arrangement?

"A. I am not familiar with that, Mr. Moore. I understand the Southern Railway operates under some transportation arrangement, I don't know what it is; I am not familiar with that end of it."

I do not know with whom or between whom that arrangement was made. I don't know if it would be a substantial advantage to me in the operation of that property, to operate to the State line, bringing the freight into Columbus and west of there, than to operate just eastward to Columbus; I have not given it any consideration, but offhand I would say no, because there is nothing between the State line and Columbus.

"Q. But would it not be some advantage to you in the interchange of freight with a connecting line down there, to secure traffic that may be routed over another line, of the line operating into Columbus?

"A. Well, I could not state offhand, Mr. Moore, what advantage that would be to us.

"Q. The Columbus and Greenville Railway Company has no voice in determining whether you operate to the State line or to the City of Columbus?

"A. I could not answer that question. I am not on the board of executives, I don't know." (Tes. 440-444.)

[fol. 370] L. L. Drescher was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is L. L. Drescher; I live in Louisville, Kentucky, where I am employed by the Louisville & Nashville Railroad Company. I am at present assistant to the vice president of that Company. I have had a little more than 20 years' experience in the 20 years' service of the traffic department of the Louisville & Nashville Railroad, a greater part of that time has been spent upon rate adjustment questions, and interstate and intrastate litigation involving freight rates.

The policy of the Louisville & Nashville Railroad in the past has been similar to the policy of other lines in respect of the disposition to maintain a low rate to move fertilizer, to encourage the production of agricultural products. In my testimony I will deal with the present interstate rates, and show what they are. I would say that the base of interstate rates maintained at the present time by the Louisville & Nashville Railroad Company reflects the policy of the Louisville & Nashville Railroad to encourage the production of agricultural products on its line. To the extent to which rates maintained by the Louisville & Nashville Railroad in Alabama on intrastate traffic are lower than the rates maintained by my company on interstate traffic, I would say that that indicates the extent to which the Alabama Commission has gone below what we felt was necessary for the purpose of encouraging the free use of fertilizer on your line; it indicates the extent to which that Commission, and other Commissions which have prescribed [fol. 371] lower rates, have substituted their judgment for the judgment of the management of the Louisville & Nashville Railroad. The carriers, in arranging for the presentations of these cases, assign various portions to the several lines.

My testimony will have to do with the rates on fertilizer and fertilizer materials applicable to points in Alabama and to the rates between points within that State, and to the 13th Section application filed by the carriers, and which is assigned for hearing at this time. I will also deal with the rates to points in Kentucky and from Ohio River Crossings to destinations in Montgomery and Atlanta sub-divisions of Southeastern Territory.

In arranging my testimony my intention is to deal first with the Alabama intrastate situation, and follow with the other features that I was designated to handle.

At the present time freight charges are assessed on fertilizer and fertilizer material moving between points in Alabama, except that portion of the State affected by the Interstate Commerce Commission's decision in the Meridian Case, on basis of mileage scale prescribed by the Public Service Commission of the State of Alabama in its order dated May 26th, 1924. My Exhibit No. 157 is a statement showing the scales of rates prescribed by the Alabama Pub-

lic Commission for single and joint line application over the so-called standard roads operating within that State.

[fol. 372] (Statements were thereupon received in evidence, and marked "Respondents' Exhibits Nos. 157 to 195, inclusive, Witness Drescher,") (Tes. 444-448.)

The present scale of rates applicable between points in the State of Alabama became effective on July 25th, 1924, pursuant to the Alabama Commission's order I have just referred to. Prior to that time, and extending back for a period of something like 17 years, the rates on this commodity were made by the use of the mileage scale of rates commonly referred to as the Alabama statutory scale. By statute approved November 23rd, 1907, the Alabama Legislature fixed the same mileage scale of rates on fertilizer, carload and less carload, between points in that State, as were then in effect between points in the State of Georgia on carload and less carload traffic. This action by the Alabama Legislature was taken without any prior investigation, and without any hearing in respect to the reasonableness either of the rates then existing, or of the rates fixed by this statute, and resulted in substantial reductions in the rates previously in effect. There rates remained in force until they were superseded by the recent order of the Alabama Commission, except as they were changed by General Order 28 and Ex Parte 74, and then the general Reduction of 1922. During the latter part of 1921, the Alabama Public Service Commission cited the carriers operating in that State to show cause why that Commission should not establish a just and reasonable scale of freight rates on all commodities moving between points within the State of [fol. 373] Alabama. This, being the usual form in matters of that kind in the State of Alabama. In response to that citation the carriers submitted to the Alabama Commission mileage scales for application on classes and various commodities. The scale proposed by the carriers for application on fertilizer between points within the State of Alabama was substantially the scale prescribed by the Interstate Commerce Commission in the Third Royster Scale, 50 I. C. C. 34, advanced under General Order 28 and Ex Parte 74, and modified so as to make the rates end in even figures. That is, to end in zero or 5.

My Exhibit No. 158 is a statement showing the rates for single line application on fertilizer, carload, in effect prior to July 25th, 1924, the rates on the scale proposed by the Alabama lines subject to the General Revision of 1922. The rates on basis of the Third Royster Scale, 50 I. C. C. 34, advanced under General Order 28 and Ex Parte 74, and then reduced pursuant to the reduction of 1922, and in the last column is shown the scale of rates prescribed by the Alabama Commission in the order to which I have just referred. In proposing the scale of rates which they did in response to the Alabama Commission's citation, and which, as I have just stated, was substantially the Royster Scale prescribed in 50 I. C. C. 34, the carriers felt that its reasonableness had been fully established. Mr. Menzies has given the history of the Royster scale and shown as it is now, this scale was prescribed by the North Carolina Commission for application in that State. He has also called attention to the fact that in the Charleston case, Docket 8627—53 I. C. C. 506, the Interstate Commerce Commission prescribed a similar scale for application from Charleston, South Carolina, [fol. 374] to points in North Carolina, so that it appears unnecessary to cite again the origin of the scale of rates we are here proposing for application in the Southern Territory. (Tes. 448-450.)

Starting then, with a scale of rates that had been fixed by a State Commissions, and adopted for application on interstate traffic by the Interstate Commerce Commission, after two exhaustive hearings, and on basis of which the carriers knew an enormous tonnage of fertilizer was being handled, the carriers felt they had every reason to believe they were proposing a fair and reasonable basis for application in Alabama. The Alabama Public Service Commission, however, did not see the matter in the same light, but instead prescribed a scale of rates shown in my Exhibit 157, for application over the standard lines, with rates somewhat higher over and in connection with the weaker roads.

As to how those rates were established which were in effect prior to July 25th, 1924. They were then the equivalent of the rates fixed by the Alabama Legislature on the 110 commodities. They, in turn, were the rates in force in Georgia at that time.

These standard line scales are materially lower than the carriers proposed or than were prescribed by the Interstate Commerce Commission in the Royster Guano Company and Charleston, South Carolina, cases and reaffirmed in another case decided since the decision of the Alabama Commission. This latter case to which I refer, is the complaint of the traffic department, Goldsboro, North Carolina, Chamber of Commerce, versus Atlantic Coast Line Railroad, decided July 10th, 1924, and reported at 91 I. C. C. 315.

[fol. 375] That exhibit that I have filed as Exhibit 158, indicates that as a result of the citation to which I referred, the carriers suggested slight increases in the Alabama intrastate rates, and that the Commission—the Alabama Commission, made still further reduction in the then existing Alabama State rates, as a result of its order. As a part of the record in this case, I have filed as my Exhibit No. 159, a copy of the report and order of the Alabama Public Service Commission, prescribing the rates for application on fertilizer and fertilizer materials between points within that State. The scales of rates prescribed by the Alabama Commission are considerably lower than the scales prescribed by the Interstate Commerce Commission in the Blackshear Case, 87 I. C. C. 654, for application from Blackshear, Georgia, to points in Florida. They are also lower than the scale of rates on the same commodities prescribed by the Commission in the Memphis-Southwestern Case, 77 I. C. C. 473. This will be noted by reference to my Exhibit No. 160.

I have included in this statement the Royster scale rates prescribed in 50 I. C. C. 34, and an examination of the statement shows that the scale prescribed by the Alabama Commission is considerably below the level of the rates prescribed by the Interstate Commerce Commission in each of these other two cases. (Tes. 450-452.)

In its decision, the Alabama Commission made reference to the Blackshear, and the Memphis Southwestern Scales, as prescribed by the Interstate Commerce Commission, and stated, as shown on page 16 of my Exhibit No. 159, "that a just and reasonable scale of rates may be constructed by [fol. 376] observing the Memphis-Southwestern scale as a guide, but using a somewhat lower level." In reaching this

conclusion, we think the Alabama Commission erred, for the reason that there is nothing in the Interstate Commerce Commission's decision in the Memphis-Southwestern Case to indicate that the rates therein prescribed were fixed from the standpoint of their reasonableness.

Q. Now, assuming for the purpose of this question, that the Interstate Commerce Commission should find that the transportation conditions in the Southwest were the same as in the Southeast; that the traffic conditions in the Southwest were the same as in the Southeast—and that the density of tonnage is the same, and the character of the tonnage the same, and in fact all the same, and after finding such a situation to exist in the two territories, it should determine upon a just and reasonable scale for application in the Southwestern Territory, what reason would you advance for objecting to the application of that scale in Southeastern Territory?

"A. If all of the conditions that you have outlined were found to exist, I could conceive of no reasons that the carriers might give for refusing to apply that scale of rates in Southeastern Territory."

The scale of rates which the Alabama Commission prescribed, and which became effective on July 25th, 1924, is not materially higher than the rates that were in force before the carriers received authority in Ex Parte 74 to make a general increase in their freight rate structure; in fact, there are a few mileage blocks as to which the present rates are the same as, or less, than the rates in effect prior to this revision.

[fol. 377] To illustrate this, I call attention to my Exhibit No. 161, which is a statement showing the single line scale of rates prescribed by the Alabama Commission, as compared with the Alabama intrastate rates in effect on August 25th, 1920, and which was immediately prior to the effective date of the general increase under Ex Parte 74, and also as compared with the intrastate rates in effect just prior to July 25, 1924, on which date the present Alabama scale took effect. This last table of rates, that is, those that were in effect just prior to July 25, 1924, are the rates shown in the first column subjected to the Ex Parte 74 in-

crease, and the general Reduction of 1920. (Tes. 452-454.)

As shown by this statement, the scale of rates which the Alabama Commission prescribed in 1924, has taken away from the carriers most of the increase which they were granted in 1920 under Ex Parte 74. The percentage of increase then authorized in Southern Territory was 25 per cent. In 1922 those rates were subjected to a general reduction of 10 per cent., so that the present rates should be approximately 12½ per cent higher than the rates in effect on August 25th, 1920. The general level of the recently prescribed Alabama scale is much less than 12½ per cent. higher than the rates that were in effect on August 25, 1920. The effect of the new scale of rates prescribed by the Alabama Commission is to deny the carriers the full measure of the general increase granted in 1920 over a scale of rates which the Alabama authorities had prescribed for application within that State. The last column of figures shown on this exhibit indicates that the percentage of reduction to which the rates in effect on July 25th, 1924, were [fol. 378] subjected, when this new scale of the Alabama Commission became effective.

My next exhibit is the statement comparing the Alabama Commission's scale with the Memphis Southwestern scale, which shows how much the interstate scale is higher than the Alabama scale. That will be found in my Exhibit No. 162, in which I have used the single line scale for the purpose of illustration. I have also included in this statement the scale of rates prescribed by the Interstate Commerce Commission in the Meridian Rate Case, I. & S. Docket 1372—66 I. C. C. 179, and which applies from Meridian, Mississippi, to points in Alabama for distances up to 200 miles. It will be noted that for each and every block of distances the Alabama Commission's scale is less than either the Memphis-Southwestern or the Meridian scale. The Memphis-Southwestern scale ranges from 4 to 25 per cent. of the Alabama Commission's scale, while the rates under the Meridian scale are from 12½ to 35 per cent. higher than the Alabama scale.

It is doubtful to my mind whether the Memphis, Southwestern or 9702 scale of rates on fertilizer is a fair and reasonable scale for application in the Southwest, and this view is supported by the proposed report of Attorney-Ex-

aminer Disque in the Consolidated Southwestern Cases, wherein he recommends the abandonment of that scale and the application of the Class E basis throughout Southwestern Territory. We, of course, do not know what the Commission is going to do with respect to Attorney-Examiner Disque's report in that case, but in view of the influence that the 9702 scale presumably has had upon the Alabama Commission, and also upon this Commission in the Blackshear Case, the Commission's final action on the Examiner's proposed report should be awaited in order to determine what rates will obtain in that territory.

[fol. 379] The present Alabama scale is from 5 to 75 cents per ton less than the scale of rates obtaining under the 9702 scale. If the Attorney-Examiner's report in the Southwestern Case is sustained, the fertilizer rates in the 9702 territory will be somewhat increased. If we reconstruct the present Alabama scale by adding to it the increases to which the 9702 scale will be subjected, if the Attorney-Examiner's proposed report is adopted, we will get rates that will be considerably higher than those which the Alabama Commission has prescribed, and also rates that will be more in harmony with the Royster scale which the carriers are here proposing. To illustrate this situation, I wish to call attention to my Exhibit No. 163, which is a statement of the rates on fertilizer applicable intrastate between points in Alabama, compared with the 9702 scale and the tentative scale of the Attorney-Examiner in the Consolidated Southwestern Cases. If the scale of rates applicable in this portion of Southwestern Territory was the proper guide to use in determining the rates for application in Alabama at the time the Alabama scale was prepared, to which theory we, of course, do not subscribe, it would appear that the Alabama rate should be revised to reflect the same relationship to any increased scale that might be prescribed for application in the Southwest that the Alabama rates now bear to the 9702 scale. (Tes. 454-457.)

If that scheme that I suggest were adopted, it would bring the Alabama rates substantially up to the basis which I am proposing, of the interstate and intrastate application [fol. 380] in this case, but not in all cases. For the longer distances there would be a difference amounting to as much, I think as 17 cents a ton. I see one instance here

where it would be a little more than that. It would bring it more nearly in harmony with the basis I suggest.

The Alabama reconstructed scale, as it is shown on my exhibit is made by adding to the present Alabama scale the amount that Attorney-Examiner Disque scale—proposed scale of rates, are higher than the present 9702 scale.

To illustrate, how the rates which the Alabama Commission prescribed compare with the normal interstate rates maintained by the various Southern lines on fertilizer between points in the South, I have prepared two exhibits. The first of these is a statement showing the local scale of rates on fertilizer of various Southeastern lines as compared with the single line scale prescribed by the Alabama Commission, also the third Royster scale, prescribed by the Interstate Commerce Commission, in 50 I. C. C. 34. The notes which are explained on the last sheet of the exhibit, indicate the territories in which the scales apply. The Central of Georgia scale, under Note 6, and also the scales of the Southern Railway and the Atlanta & West Point Route are those prescribed by the Georgia Railroad Commission, brought up to date under the several increases and the general reduction of 1922.

It will be noted that the scale of rates prescribed by the Alabama Commission is considerably below the level of these other scales which measure in quite a large degree the rates which those lines apply on fertilizer in the territory in which those scales apply. The so-called Third Royster Scale is of course higher than the scale prescribed by [fol. 381] the Alabama Commission, but is not higher than the general level of the other scales shown on this statement, excepting those which are the same as the Georgia State scale.

The second of this series of exhibits, is my No. 164, and which is a comparison of the specifically published interstate rates on fertilizer from important manufacturing points in the State of Alabama for single line application up to 200 miles from the manufacturing points, with the rates on basis of the Alabama Commission's scale, and on basis of the Third Royster scale. The origin points are Birmingham, Columbia, Dothan, Huntsville, Montgomery, Selma and Troy, Alabama, which were selected, because

of my understanding that the largest fertilizer plants in the State of Alabama are located at these points. The destination points are on the lines radiating from these manufacturing points for distances up to 200 miles.

The exhibit, which consists of 58 sheets of rates, shows that the Alabama Commission went very much below the level of the interstate rates in fixing the scale for application within that State. Just to illustrate, take the rate from Birmingham to Sulphur Springs, Georgia, the first point outside the State of Alabama, shown on sheet 1 on the exhibit. The distance is 112 miles, the present rate $2.82, the Alabama Commission prescribed $2.15 for that distance. On the third sheet, from Kewanee, Mississippi, for 136 miles, the present rate is $3.04, the Alabama Commission prescribed a rate of $2.35 for a haul of the same distance within the State of Alabama. On sheet 4, from Birmingham to Bullochsville, Georgia, a station on the Atlanta, Birmingham & Atlantic Railway, 192 miles from Birmingham, the present rate is $3.49, the Alabama Commission fixed for that distance a rate of $2.95. Similar com [fol. 382] parisons may be drawn from practically every one of the rates included in the exhibit, but it is not necessary to consume the time that will be required to draw attention to all of them. (Tes. 457-460.)

Those that I have pointed out are typical of the exhibit. They are the first stations beyond the State line, on the particular route that I have mentioned. The statement shows what the rates will be for these distances on the basis of the Third Royster scale, and while there will be some advances, there will also be a large number of reductions.

I have prepared an analysis of this exhibit, and have filed it as my Exhibit No. 166. It shows that out of a total of 2,355 rates, the Alabama scale is less than the interstate rates shown on this exhibit in 2,145 instances, it is higher in 182 instances, and it is the same in 28 cases. The substitution of the Royster scale for the present interstate rates from these manufacturing points to the destinations shown on this exhibit will produce 1,114 reductions, 963 advances, and 278 instances in which there will be no changes in the present rate.

The purpose of this exhibit is to show, first, that the proposed Royster scale will result in more reductions and advances in the rates of the interstate rates in this territory, and secondly, to show how much below the interstate rates the Alabama Commission saw fit to make the rates for application in that State.

As to how the rates prescribed by the Alabama Commission, and the rates in the Third Royster Scale, compare with the rates on fertilizer which the Interstate Commerce Commission found not unreasonable from Mount Pleasant [fol. 383] to points in Mississippi.

In the case of the Mount Pleasant Fertilizer Company versus Louisville & Nashville Railroad Company et al, I. C. C. Docket 7750, and reported at 50 I. C. C. 253, complaint was made against the rates charged on shipments of fertilizer from Mount Pleasant, Tennessee, to a number of points in Mississippi on the Gulf, Mobile & Northern Railroad. The distances to these particular points ranged from 158 to 337 miles, and the rates in effect when the shipments moved, were $3.00 and $3.20 per ton. The $3.00 rate applied to points which were from 158 to 226 miles from Mount Pleasant, while the $3.20 rate applied to stations which were from 248 to 337 miles distant. The present day equivalent of the $3.00 rate is $4.28, and of the $3.20 rate $4.50 per ton.

My Exhibit No. 167 shows how the rates on the Alabama scale, and the Third Royster scale, for corresponding distances, compare with, and the amounts that they are higher or lower than, the present day equivalent of the rates found by the Interstate Commerce Commission to be not unreasonable or unjustly discriminatory. For the distance of 158 miles from Mount Pleasant to Brownsfield, Mississippi, it will be noted that the Royster scale produces a rate 90 cents per ton less than the present day equivalent ($4.28) of the $3.00 rate, which the Commission refused to condemn, while the Alabama scale produces a rate of $3.03, which is $1.25 per ton less than the present day equivalent of the rate which the Commission approved, and is only 3 cents [fol. 384] per ton higher than that rate was before the case was tried, and before either of the general increases.

I did not say the Royster scale was higher than the present-day equivalent of the rate fixed by the Commission; the Royster scale is less than the present-day equivalent of the rate which the Commission refused to condemn in that case.

It will be seen that with the exception of the last three points in the list, that is Philadelphia, McDonald, and Neshoba, both the Alabama and the Royster scales produce lower rates than the present-day equivalent of the rates which the Commission approved from Mount Pleasant, Tennessee. That decision was based on the particular record in that case.

By Mr. Moore:

"Q. You do not think the Commission would prescribe rates like that, if it were fixing rates for application for distances varying from 158 miles to 337, do you, Mr. Drescher?

"A. I think we can show——

"Q. (Interrupting.) With a variation of 20 cents per ton for the distance 140—158 miles short distance, and a long distance of 337?

"A. I would not like to predict what the Commission would do right now, with the scale of rates such as those are."

My next series of exhibits deal with the question of discrimination of the Alabama State rates versus interstate rates, as covered by the allegations in the 13th section petition. I will identify these exhibits and explain what they are intended to show. As the first of this series of exhibits [fol. 385] deals with the question of discrimination of State against interstate traffic, resulting from the application of the recently prescribed scale of rates in Alabama, I call attention to my Exhibit 168, which is a chart showing the geographical outlines of the State of Alabama, and also the lines of railroads between certain fertilizer manufacturing points in Alabama, and fertilizer manufacturing points in adjacent States. I have shown on the map or chart the names of the railroads running between these several manufacturing points. That is a composite of the chart that I

will subsequently file. These points outside the State of Alabama were chosen because of my understanding that there is a fertilizer movement to points at each one of them, and the territory between these points and the Alabama cities may, I think, be considered as a natural and logical marketing territory for those factories. (Tes. 460-464.)

[fol. 386] Dealing first with the Louisville & Nashville Railroad, I call attention to my exhibit No. 169, which shows the present adjustment of rates from Birmingham to agency stations on our road between Birmingham and Nashville, in comparison with the rates for equi-distant hauls from Nashville in the reverse direction to agency stations intermediate to Birmingham. I call particular attention to the fact that the rates from Birmingham to stations on the L. & N. are very much less than the rates for corresponding distances from Nashville, Tennessee; that the rate from Birmingham to Athens, Alabama, for 98 miles, is $1.95; from Nashville to an equi-distant station in Alabama, Elkmont, the rate is $2.59; from Birmingham to Elkmont, 107 miles, the rate is $2.05; from Nashville to Athens, for the same distance, the rate is $2.59. Athens and Elkmont represent about the midway points. The exhibit shows very clearly, that insofar as the rates are concerned, that Nashville is a considerable disadvantage as compared with Birmingham in making shipments to points in Alabama. There is a movement from Birmingham to those stations. I have just received information that there have been carload shipments this season from Birmingham to the following stations in Alabama, as shown on this exhibit: Trafford, Hayden, Blount Springs, Garden City, Hanceville, Cullman, Falkville, Hartselle, Decatur, Athens and Elkmont. I did not find out whether there were movements from Nashville; it appeared to me that there was not much of a probability of a movement from Nashville to those points, in view of the difference in the freight rates. When I say "those points" I have in mind the destinations in Alabama.

By Com. Eastman:

"Q. Now, would that be so if these interior points based their prices on the port rates? On the port price of fertilizer?

"A. Well, I don't know just what the—I am not sure as to the basis upon which fertilizer is sold, Mr. Commissioner, and I could not answer that, but I simply took the rate [fol. 387] situation as she stands."

As a part of this statement I have prepared a chart showing the relative rate levels as between Birmingham and Nashville to the territory between these two points. The purple line on the chart indicates the rate level from Birmingham, while the red line shows the rate level from Nashville. This chart illustrates the extent to which the rates from Nashville are higher for corresponding hauls than the rates from Birmingham. The dip in the rates to the station that is as far from Nashville as Aspen Hill, Tennessee, is from Birmingham, is due to the low measure of the rate from Nashville to Decatur, which is the equi-distant point from Nashville. That rate is now $2.25 per ton, and is less than the rate to points on either side of Decatur. The inequalities shown by the exhibit to exist will be removed by the substitution of the Royster scale, that is to say, each point will be given the benefit of its location, and there will be no lower rates on State traffic than applies for corresponding distances on interstate traffic. There is a violation of Fourth Section there now, but it is permitted by appropriate Fourth Section application.

"Q. One thing about that exhibit I do not quite understand. You have got at the end of the red line in the left-hand corner the words "Nashville, Tennessee." You show that as the starting point?

"A. Yes, sir.

"Q. And up here in the right-hand corner you have got "Nashville, Tennessee," also.

"By Mr. Moore:

"Q. The stations on the top should be eliminated should they not?

"A. In dealing with the rates from Nashville, of course, [fol. 388] the stations at the top of the statement should not be considered. This simply illustrates the rate level from Nashville as compared with Birmingham for points that

are the same distance from Nashville as these points at the top of the map stations are from Birmingham." (Tes. 464-468.)

That is why we have two different points indicated on the lines, as the location of the State line.

By Com. Eastman:

"Q. Is that a Fourth Section violation at Aspen Hill now?

"A. The violation is not at Aspen Hill, Mr. Commissioner; the violation is from Nashville to Decatur—Decatur being the point that is as far away from Nashville as Aspen Hill, Tennessee, is from Birmingham.

"Q. There is one at Decatur?

"A. From Nashville to Decatur; yes, sir."

The next of this series is my Exhibit No. 170, in which I have shown the present rates from Decatur, Alabama, versus Chattanooga, Tennessee, to agency stations on the Southern Railway in Alabama between those two points. This statement shows that Decatur is now able to ship into these Alabama points at rates very much less than Chattanooga has to equi distant points on the same line of railroad. To illustrate, I will call attention to the $1.65 rate from Decatur to Scottsboro, Alabama, for 66 miles, as against a rate of $2.10 for the same distance from Chattanooga, Tennessee, to Lim Rock, Alabama. The chart or graphic which accompanies this statement shows the level of the rates from Decatur, Alabama, all of which are intrastate, as compared with Chattanooga, Tennessee, from which the haul to each of these stations is interstate. The midway point would be one about 41 miles, Gurley, Alabama, from Decatur, and Cedar Grove, from Chattanooga. The rate from Decatur to Gurley, Alabama, is $1.40, and from Chattanooga to Cedar Grove it is $1.80; a difference of 40 cents a ton in favor of the intrastate shipper.

[fol. 389] The next shipment of this kind is one dealing with the situation from Birmingham, Alabama, versus Rome, Georgia, to intermediate stations on the Southern Railway. There is attached to this exhibit a sketch of the

line of the Southern Railway operating between these two cities. That is Exhibit No. 171. This statement shows that the rates from Birmingham to stations in Alabama are somewhat less than the rates for corresponding hauls from Rome, Georgia, to stations in Georgia, and that when we cross the State line from Georgia into Alabama the rates from Rome become materially higher than for an equi-distant haul from Birmingham to stations in Alabama. For instance, the rate from Birmingham to Cook's Springs, Alabama, is $1.25, for 27 miles; while from Rome to Langdon, Alabama, 27 miles, the rate is $1.69. From Birmingham to Anniston, the midway point in this stretch of territory, the rate is $1.60 for 63 miles, while from Rome to Anniston for the same distance the rate is $2.16, or 56 cents more than from Birmingham.

Similar comparisons might be made by citing other points shown in the exhibit, for example, from Birmingham to Piedmont, Alabama, the rate is $1.85 for 88 miles, while from Rome to Seddon, Alabama, for the same distance, the rate is $2.34.

While detailed comment is unnecessary, I would call attention to the abrupt jump that the rates make at the State lines, both from Birmingham and from Rome. On the second sheet of the rate statement, it will be seen that from Birmingham the rate to the last station in Alabama is 203 cents, while to the first station over the line, just one mile farther, the rate is 47 cents a ton higher. From Rome, Georgia, the jump at the state line is 45 cents for a difference in distance of only one mile, the two points here being Fearing, Georgia, and Tecumseh, Alabama.

This statement is also accompanied by a chart showing [fol. 380] the relative rate levels as between Birmingham and Rome to agency stations on the Southern Railway between those two points. It shows graphically that intrastate rates from Birmingham are very much lower than interstate rates from Rome.

While I have not qualified as a transportation man, I am familiar in a general way with the transportation conditions on our own line, and also with the various lines covered by the exhibits that I am filing. I know of no transportation condition existing that would warrant these

abrupt breaks in the rates at the State lines. I account for it by the actions of the Alabama and the Georgia state Commissions in making lower rates between points within those States. That is the only explanation I have for it.

Illustrating the situation further, I wish to call attention to my Exhibit 172, which is a statement showing the rate situation as between Birmingham, Alabama, and Columbus, Georgia, to agency stations on the Central of Georgia Railway between these two cities. Columbus, Georgia, is just over the State line, and there are no agency stations in Georgia intermediate to the Georgia-Alabama State line. All the rates, therefore, shown on this exhibit from Columbus are interstate rates, whereas, the rates from Birmingham are intrastate. The statement shows that Birmingham can ship fertilizer at a rate of $1.25 to a point 29 miles away from Birmingham (Sterretts), while the rate from Columbus to Opelika, also 29 miles distant, is $1.69, or 44 cents higher than the intrastate rate from Birmingham. (Tes. 468-472.)

Putting that another way, $1.25 rate will carry Birmingham 30 miles out on the Central of Georgia Railway, whereas, $1.24 rate will carry the Columbus shipper but 15 miles. Birmingham can ship to Childersburg, Alabama, 43 miles away, at a rate of $1.40, while the rate for that distance, from Columbus to Waverly, Alabama, is $1.92. Alexander [fol. 391] City, Alabama, is 82 miles from Birmingham, and the rate is $1.80. The same point is 75 miles from Columbus, Georgia, and the rate is $2.37. Here Birmingham has an advantage of 57 cents a ton for a 7-mile additional haul. There is also accompanying this statement a chart or graphic, indicating the relative rate levels from the two points to these stations on the Central of Georgia Railway, and it shows that the Alabama intrastate rates are very much less than the interstate rates from Columbus.

Now, of course the application of the carriers' proposed scale would remove those discriminations or those discrepancies. The drop in the rate from Columbus at the end of the graph is due, of course, to the low measure of the rates from Columbus to Birmingham; the Central of Georgia meeting that competitive situation.

Next, I wish to call attention to the rate situation from Birmingham, Alabama, to Atlanta, Georgia, to stations on the Southern Railway between these two fertilizer manufacturing points, and my Exhibit No. 173 shows this situation. Here again we see that the Alabama manufacturing point has a decided advantage over the Georgia point in making shipments of fertilizer to points in Alabama. To Edwardsville, a midway point, Birmingham has a rate $1.85, while to Columbus, Atlanta has a rate of $2.37. (Tes. 472-474.)

My next exhibit shows the situation from Montgomery, Alabama, as compared with Richland, Georgia, to stations on the Seaboard Air Line Railway between these two points. That is Exhibit 174; the Alabama intrastate scale of course applies from Montgomery to stations on the Seaboard Air Line in Alabama, and they are very much less than the rates now in effect from Richland, Georgia, to equi-distant hauls, to points in Alabama. I would also call attention in connection with this statement to the abrupt jump that the [fol. 392] rates make at the State line, just as I have done in connection with one or two of my other exhibits. That is shown graphically in the chart, and the exhibit.

The Central of Georgia Railway has a line running between Montgomery, Alabama, and Columbus, Georgia, and my Exhibit 175 shows the rate adjustment from Montgomery to stations on that line as compared with the rate adjustment from Columbus to equi-distant stations in the reverse direction. Here we find again that the intrastate rates are very much less than the interstate rates applicable from Columbus. There is also a graphic accompanying this statement, which shows the relative adjustments from the two points.

The rate from Montgomery to Peachburg is $1.45, and the distance is 47 miles; from Columbus, Georgia, to Peachburg, Alabama, the rate is $2.14, for 49 miles, a difference in the rate of 69 cents, for a difference in distance of only two miles.

Coming now to the Western portion of the State of Alabama, I call attention to the adjustment from Decatur, Alabama, versus Corinth, Mississippi, to intermediate agency stations on the Southern Railway, and this will be found in my Exhibit No. 176. This statement, like the previous

ones, shows that Decatur has materially lower rates to Alabama points than obtain from Corinth, Mississippi, for like hauls, to points in Alabama. From Decatur to Sheffield, 45 miles, the rate is $1.40, while from Corinth to Sheffield, 53 miles, the rate is $2.10.

"Q. The abrupt jump there at the State line, from Corinth is very noticeable; how do you account for that?

"A. The low rates in Mississippi from Corinth to destinations in Mississippi. We have here a jump of 78 cents a ton in the rate for a difference in distance of 3 miles."

[fol. 393] My chart very clearly shows the effect; there is a graphic accompanying this statement, and shows the relative rate levels. The rates from Birmingham, Alabama, to stations on the St. Louis & San Francisco Railway in Alabama, are considerably less than the rates which apply from corresponding distances in the reverse direction, from Tupelo, Mississippi, to points in Alabama on the same road. This is illustrative, in my exhibit No. 177. I would just call attention here to the rates to Carbon Hill, Alabama, Birmingham having a rate of $1.55 for 60 miles, as compared with $2.10 from Tupelo, to Guin, Alabama, for the same distance. The graphic accompanying this statement shows the relative rate level between these two points. There again, the effect of State made rates in Mississippi and Alabama are depicted by my showing on the chart. (Tes. 474-476.)

Returning again to the Louisville & Nashville Railroad, I wish to call attention to the adjustment prevailing from Mobile, Alabama, and Pensacola, Florida, to stations on the L. & N. Railroad as far north as Montgomery. Pensacola is located on our Pensacola Division, which connects with our main line at Flomaton, Alabama. It is 16 miles nearer Flomaton, and destinations north of Flomaton than is Mobile, but the rates to very many of these stations to Mobile, are now lower than to Pensacola. My exhibit No. 178 shows the situation. The statement shows the rates that were in effect from these two points prior to the effective date of the Alabama Commission's order in the fertilizer case, that is July 25th, 1924. It will be noted that to part of this line, as far north as but not in-

cluding Greenville, Alabama, 134 miles from Mobile and 118 miles from Pensacola, the rates from the two points were the same. To stations, Greenville and north, the rates from Mobile were higher than from Pensacola. The recently prescribed scale of the Alabama Commission has changed this situation, and has given to Mobile a decided [fol. 394] advantage to a greater portion in this territory, notwithstanding the fact that the distance favors Pensacola.

The rates from Decatur, Alabama, to stations on the main line of the L. & N. Railroad in Alabama are less than the rates on fertilizer from Decatur to stations on the main line of the Louisville & Nashville Railroad north of Decatur in Tennessee and Kentucky. This is illustrated in my Exhibit 179. The rate from Decatur to Cullman, Alabama, a point 32 miles south of Decatur, is $1.30, while to Prospect, Tennessee, 30 miles north of Decatur, the rate is $1.69. This statement shows the advantage in the way of freight rates that parties at these stations in Alabama have over those in Kentucky and Tennessee in purchasing fertilizer from Decatur. In all probability, the parties located on our line contiguous to Decatur, would be disposed to buy fertilizer at Decatur, particularly if they stood the freight rates.

Now, in the previous exhibits I have filed showing the advantages that Birmingham and Montgomery have in the way of freight rates on fertilizer over Columbus, Georgia, to points in the State of Alabama, I would like to farther illustrate this condition by calling attention to the adjustment as between Eufaula, Alabama, and Columbus, Georgia, to stations on the Central of Georgia Railway in Alabama. Eufaula is located on the Alabama side of the Chattahoochee River, while Columbus is on the Georgia side of the same stream. The Central of Georgia Railway has a direct line running from Montgomery to Eufaula. From Columbus it has a line running to Union Springs, Alabama, at which point connection is made with the line extending from Montgomery to Eufaula. My exhibit No. 180 is a statement showing the present rates on fertilizer from Alabama points as compared with rates on like traffic from the Georgia points to Montgomery and intermedi- [fol. 395] ate agency stations on the Central of Georgia

Railway. This exhibit shows that Eufaula enjoys very much lower rates than does Columbus. For example, the rate from Eufaula to Cedar Plains, Alabama, is $1.30 for 35 miles, while from Columbus, Georgia, to Hurtsboro, Alabama, for the same distance, the rate is $1.80. There is a chart accompanying this exhibit also which shows the relative rate level from these two points to stations in Alabama. (Tes. 476-479.)

This statement covers points between Columbus and Montgomery, on the one hand, and between Montgomery and Eufaula, on the other. It does not cover points from Columbus to stations on the Central of Georgia west of Union Springs, and in the direction of Eufaula.

The scale of rates recently prescribed by the Alabama Commission does not apply from Birmingham to stations on the Alabama Great Southern Railway between Birmingham and Meridian, and the disparities as between State and interstate, to which I have called attention, do not exist in the rates from Birmingham, Alabama, versus Meridian, Mississippi, to stations on the Alabama Great Southern Railroad between those points. Here the rates are more nearly in line one with the other, this situation being due to the order of the Interstate Commerce Commission in the Meridian Case. If it was not proper to have an intrastate adjustment from Birmingham to these Alabama points materially lower than from Meridian to the same points, there are no conditions, so far as we are advised, that will justify the present disparity in favor of the intrastate rates from Alabama manufacturing points, as compared with the interstate rates from points outside of Alabama in the several instances to which I have called attention, and to all of the other similar situations that now exist.

[fol. 396] My exhibit No. 181 is statement showing the present rates on fertilizer from Birmingham, Alabama, and Meridian, Mississippi, to points on the Alabama Great Southern Railroad between those cities, and the rates for corresponding distances on basis of the Third Royster scale.

"By Com. Eastman:

"Q. Now, what causes the drop in the rate from Birmingham to Plok Junction and Tuscaloosa? You see that rate continually increases when you get to Cottondale, and then it drops down to Polk Junction and Tuscaloosa, and comes up again at Crabtree.

"A. I cannot explain the reason for it, except there was some competitive conditions there, Mr. Commissioner.

"Mr. Aldridge: The L. & N. comes in there.

"The Witness: Is that what makes the difference? I can see now."

Just before I left Louisville there was brought to my attention an inconsistent and anomolous situation existing in the present adjustment of rates on fertilizer in Alabama, to which I would like to call attention, and that is in connection with the rates on fertilizer from Montgomery to certain stations on the Mobile & Ohio Railroad, and from Birmingham to stations on the Alabama Great Southern Railroad, located in so-called Meridian Territory. The Alabama scale is not applied from Montgomery to stations on the Mobile & Ohio Railroad west of Tuscaloosa, or from Birmingham, Alabama, to various stations on the Alabama Great Southern Railroad west of Tuscaloosa, because of the order of the Interstate Commerce Commission in the Meridian Case. They are not applied by those lines. The Louisville & Nashville Rail- [fol. 397] road was not a party to that proceeding, and the order issued in connection therewith did not run against that line. There appears to be, therefore, no prohibition running against the application of the joint line scale of rates prescribed by the Alabama Commission, in making rates on fertilizer from Montgomery or Birmingham to these stations, on the Mobile & Ohio and Alabama Great Southern Railroads. The rates which have direct application from Montgomery over the Mobile & Ohio Railroad, and from Birmingham over the Alabama Great Southern Railroad to stations on those lines west of Tuscaloosa are higher than the joint line scale prescribed by the Alabama Commission applicable over the Louisville & Nashville Railroad in connection with the Mobile & Ohio Railroad,

or the Alabama Great Southern Railroad via Tuscaloosa. Now, the extent to which this is true is shown in the exhibits which I have filed, No. 182. I thought that that was the situation which I might particularly call attention to in this proceeding. (Tes. 479-482.)

[fol. 398] Other witnesses have presented testimony and many exhibits for the purpose of proving that the Royster scale prescribed in 50 I. C. C. 34, and brought up to date under the several general increases and the general reduction in 1922, is a fair and reasonable basis for application throughout the South, and we rely upon their showing as a justification of the proposed scale for application in the South generally, including the Alabama intrastate traffic. I have, however, a few exhibits which I desire to file to supplement the testimony, and the exhibits already put into the record in support of the reasonableness of the proposed scale. These exhibits show the per car earnings that will accrue to the carriers from the handling of fertilizer and fertilizer materials, in comparison with the per car revenue derived from the handling of other so-called low grade traffic. Now, in preparing and submitting these comparisons of per car revenue on low grade traffic, with the per car revenue, the carriers will derive from the fertilizer business, if the proposed scale is adopted, we had in mind showing how much revenue we would obtain for handling other kinds of traffic in carload units. In making comparisons of this character, due allowances have been made by the carriers for the net, that the amount of net tonnage handled, in the case of some of the other commodities, is considerably greater than in the case of fertilizer. However, when measured in terms of service performed, it does not require very much more expense, if any, to handle a carload of sand and gravel, for instance, in a train, than it does to handle a car of fertilizer. In determining to suggest the application of the Royster scale for general use in the Southeast on fertilizer, the carriers did not have in mind the per car earnings on sand and gravel, iron or steel articles, coal, pig iron, or any other low grade traffic. They had in mind, that this [fol. 399] scale, in their judgment, and based on past experience, would be a just and reasonable scale for application on this commodity throughout Southern Territory,

and in submitting the comparisons of carload earnings on other commodities in the South, and in submitting comparisons of the rates on fertilizer and other commodities in the North, they do so with the idea of justifying the reasonableness of the scale, and not as indicating the influences which have controlled their determination to establish these rates. I make this explanation in order that it may be clear at the outset that my purpose in submitting these exhibits is merely to indicate what the carriers are earning per car on other traffic which they handle in substantial volume, and I believe that such comparisons are particularly pertinent in this case, as we have been notified that it would be decided in the light of the new law resulting from the recent joint resolution of Congress, in which this Commission now has under consideration in Docket 17000.

After we get the sand in our train, I don't think it costs us any more, substantially more, to haul a car of sand and gravel over the road than it does to haul a car of fertilizer. Based upon the average loading of sand on the Louisville & Nashville Railroad for a period of one year, which was 93,600 pounds, and on fertilizer of 48,400 pounds, and assuming 40,000 pounds as the weight of the car, there would be a difference of about 45,000 pounds in the total weight of the load; the car would weigh the same in both instances, and the sand weigh 93,600 pounds, and the fertilizer 48,800 pounds. I figured that would be about 44,800, (48,800). The average loading of fertilizer on our line for the 12 months period for which we have ascertained that information, was 24.4 tons per car. I think that is higher than some of the other lines, and it is still less than some others that I have heard about. (Tes. 482 5.)

[fol. 400] In regard to the cost of hauling: I am not an operating man. I have not really investigated costs of operation; I simply express that as my personal opinion. Our engines have a certain tonnage rating, which means the amount to tonnage they can haul economically.

If all of the cars in the train were loaded with sand and gravel and to the loading which I have indicated, we could not haul as many cars as we could of cars loaded with fertilizer, but we do not handle any sand, and we do not handle any fertilizer that way, and I was simply making

my statement on the basis of our actual experience in moving the traffic. They enter into the consist of the train, and every car of sand and gravel will go farther to fill out the maximum tonnage of the locomotive than a car of fertilizer will. I cannot give you the average haul for sand and gravel; I think it is relatively short distance. I think it is shorter than fertilizer. This average weight of about 24 tons per car that you mentioned, is based on the average of that 64 account, that we submit to the Interstate Commerce Commission in our report. That is based on the average weight of the material, as well as fertilizer—materials that are in that 64 account.

The illustration that I have been dealing with is an extreme illustration, and, I will, in my testimony, refer to lumber and other commodities that do not load as heavy as sand and gravel, and that move longer distances; I will refer to lumber, on which the average loading is just a little bit more than the average loading on fertilizer. Sand and gravel is not quite the heaviest loading commodity to which I refer; I have some statements on coal, and our average loading of coal is slightly more than sand and gravel.

Sometime ago, we obtained a list of the shipments of sand and gravel, crushed stone, and screenings, that moved between points on our line during the period of one month. [fol. 401] For the purpose of this case I have set down all of the points except some few in Illinois and Indiana, between which this movement took place, and computed the per car revenue on basis of the present rates, and the average loading on our road for the 12 months period, July 1st, 1923, to June 30th, 1924, inclusive. Then, I have shown in comparison with this the per car revenue that we would earn for handling a car of fertilizer between the same points at the rates on basis of the Alabama Commission's scale, and the so-called Third Royster scale. In making this computation I have used an average loading of 24.4 tons on fertilizer, which was the average loading on our road during the year ending June 30th, 1924. The result is shown in the statement I have filed as Respondents' Exhibit No. 183. It will be noted that the Alabama scale will produce materially less per car revenue on fertilizer

than do the present rates on sand, gravel and stone, between the points where this traffic actually moved. The Royster scale will result in larger per car earnings on fertilizer than the Alabama scale, but those earnings will not be materially, if any, higher than the revenue we would earn for the handling of sand, gravel and stone at the present rates, from and to the points where this traffic actually moved. (Tes. 485-488.)

The next statements made comparisons of the per car earnings on coal, from Birmingham, as representative of the coal mining district in Alabama, to stations on the Louisville & Nashville Railroad as far south as Montgomery; to stations on the Southern Railway as far east as Rome; to stations on the Alabama Great Southern Railroad southwest to Meridian, Mississippi; to stations on the Central of Georgia Railway southeast to Columbus, Georgia; and to stations on the St. Louis-San Francisco Railway as far as Corinth, Mississippi, with the per car revenue that the carriers would earn for handling fertilizer for like distances at the rates under the Royster scale.

[fol. 402] My exhibits 184, 185, 186, 187 and 188 show that the fertilizer rates on basis of the Royster scale will be productive of less per car revenue than the coal traffic. I never made any comparisons on the basis of the gross ton miles, including the weight of the car, and also including both the loaded and empty car movement.

The last five exhibits make comparisons of the per car earnings on fertilizer with similar earnings on coal from Alabama points, but similar results may be obtained by making comparisons with the earnings on coal from mines in Western Kentucky and also in Eastern Tennessee and Southeastern Kentucky.

In this connection, I call attention to my Exhibit 189, which makes the comparison with the per car earnings on coal from mines in Western Kentucky to stations on the Louisville & Nashville Railroad, as far south as Decatur, Alabama, and southwest as Memphis, Tennessee. These Western Kentucky mines are natural sources of coal supply for the destination points shown, and a large tonnage is actually moved at these rates. Also, the rates to Nashville, Clarkesville, Memphis, Milan and Humboldt, are the present-day equivalent of rates approved by the Interstate

Commerce Commission, and from that standpoint we feel that the reasonableness of the coal rates to these stations is not open to question.

My Exhibit No. 190 is statement showing the per car revenue that we receive for handling coal from the Jellico Middlesboro Group in Southeastern Kentucky and Eastern Tennessee to Louisville, Kentucky, and Cincinnati, and intermediate stations on the Louisville & Nashville Railroad in comparison with the per car earnings on fertilizer handled for like distances at rates on basis of the Royster scale. Here again we find that the Royster scale will be productive of less revenue per car on fertilizer than the coal rates from this group of mines to the stations set out [fol. 403] in the exhibit. I would like to add here too that those coal rates to Cincinnati and Louisville have also been approved by the Interstate Commerce Commission. The reasonableness of those rates is not open to question in this proceeding. I have some more coal exhibits. A similar situation is found when we make the same sort of comparison with the rates and per car revenue on coal from natural sources of supply to important destinations in the South, and this will be confirmed by reference to my Exhibit No. 191.

Coal is a low grade commodity, of lesser value than fertilizer; coal has a value at the mines now of from somewhere around 75 cents to $2.00 a ton, according to the grade, and of course the value of fertilizer is considerably more than that. (Tes. 488-491.)

Coal moves in very much greater volume than fertilizer does. There is a steadier movement of coal than there is of fertilizer. It is a commodity that the carriers have recognized needed low rates in order to move the traffic, particularly for considerable distances. Notwithstanding that, the per car revenue as shown by these exhibits, in the case of coal, is substantially less in most instances than the per car revenue on fertilizer; my exhibit shows that to be true.

I would not say it was a fact that the per car revenue on coal is as a rule greater than the per car revenue on any other traffic that is handled by the railroads; I have not made a test of that; of course manufactured commodities

—some manufactured commodities give us a great deal higher per car revenue than coal does. I have not any in mind. At the next hearing, if you want me to do so, I will cite you to some instances of that kind.

Bituminous asphalt rock, a road-building material, it is shipped in large volume from Bowling Green, Kentucky, and the rates that apply on this traffic to stations on the [fol. 404] Louisville & Nashville Railroad yield greater per car revenue than will the Royster scale on fertilizer for equal distances. My Exhibit No. 192 confirms this statement. Likewise, the handling of pig iron from Birmingham to points in the Southeast at the present rates is productive of greater per car revenue than would be the handling of fertilizer for like distances under the Royster scale of rates. This is shown in my Exhibit No. 193.

The last of these exhibits is one in which I have shown the rates and per car revenue on lumber from stations on the Louisville & Nashville Railroad to Ohio River Crossings and Lexington, Kentucky, in comparison with the rates and per car earnings on fertilzer at the Royster scale for like distances. This is my Exhibit 194. Here we have the commodities the average loading of which is only slightly higher than the average loading of fertilizer, and which moves in the same kind of cars. As shown in the statement, the per car revenue that the carriers would earn on fertilizer at the Royster scale basis is considerably less than they would earn in the handling of lumber from these points in the Ohio River cities.

"Mr. Mohr: If Mr. Quirk is interested in knowing whether there are any other commodities that pay greater sums to the carriers per car than coal, he can obtain the information from the exhibits that you have filed here, can he not? There are a number of them, those bituminous asphalt rocks, is greater, it seems to me, on a casual examination of it.

"Mr. Quirk: Then, you have two greater, would you not?

"Mr. Mohr: Like lumber, you will find an additional one. And, the witness will furnish them to you, if you just ask him for them.

"The Witness: I will be glad to furnish them.

"Mr. Mohr: Well, I can say as a matter of fact, it is not true, from my observation of it." (Tes. 491-93.)

[fol. 405] My Exhibit 195 is statement in which I have shown the present rates from the Ohio River Crossings, Cincinnati, Louisville, Evansville and Cairo, and from St. Louis to Nashville and representative destinations in Montgomery and sub-territories. I have also shown the proposed rates from these crossings or gateways. Here we proposed to continue the relative adjustment as between the several crossings to Southeasern Territory. In working out the proposed rates, Louisville was taken as the pivotal point, and the rate made on basis of the distance from that Crossing. Evansville and Cairo will be made the same as Louisville to Nashville and to Montgomery and Atlanta sub-territories. To Nashville and to the Montgomery sub-territory it is proposed to make the rates from Cincinnati a differential of 55 cents per ton over the rates from Louisville, the present differential now being in most instances 56 cents per ton. To Atlanta sub-territory the rates from Cincinnati will be made the same as the rates from Louisville, which is in accordance with the usual basis for making rates to that territory. From St. Louis it is proposed to make the rates to all of this territory a differential of $1.20 per ton over the rates from the lower Ohio River Crossings. This differential is practically the same as was in effect for many years prior to General Order 28 increase, and which has since widened until it is now very much in excess of that amount. The restoration of the differential to the $1.20 figure will produce a number of reductions in the present rates from St. Louis to the Southern Territory.

Now, that is all I have, except the Commissioner asked Mr. Chadwick where we got 55 cents differential, Cincinnati over Louisville to Montgomery Territory. That started with a differential of 40 cents a ton, which was the basis for many years prior to General Order 28. With the gen- [fol. 406] eral increase under General Order 28 and Ex Parte 74, and then the General Reduction that has come about, that has come to be 54 cents in some instances and 56 cents in others, depending upon the way fractions were

cast in ironing out the fractional rates. Now, that 40 cents a ton differential, or 2 cents a hundred, represents what in the view of the carriers was a proper differential to apply Cincinnati over Louisville, to this territory to which the distance from Cincinnati was substantially 110 miles greater than from Louisville. Applying the scale literally from Cincinnati to Montgomery, Alabama, we would get a rate that is about 56 cents higher than the scale makes from Louisville. The present difference there is 54 cents, so an average of those two, and to even up is 55 cents, and that is how we got at this 55-cent differential.

There is no fertilizer manufacturing plant at Lexington, Kentucky, and there is no fertilizer shipped from that place, nor is there any fertilizer material that I know of that is shipped from Lexington, and no one will be harmed by continuing the group basis from Lexington, and no one at Lexington will be benefited by publishing rates from Lexington on basis of the scale for distances from that point. We are simply proposing to continue the present group adjustment from the Ohio River Crossings, to maintain some sort of equalization basis for the—in order to give the carriers the opportunity to compete for this traffic by the different gateways that they serve. (Tes. 493-96.)

Columbus, Georgia, is a Montgomery sub-territory; from the Ohio River Crossings it is in Montgomery sub-territory. It is on the very edge, just west of that you reach the Atlanta sub-territory—I mean just east, you reach the Atlanta sub-territory.

"Com. Eastman: Mr. Tilford, how about that?

"Mr. Tilford: You asked if Columbus, Georgia, was in Montgomery sub-territory. It is in Montgomery sub-territory, generally speaking. In working out the general adjustment in 13494, we found it necessary to put it in the [fol. 407] Atlanta sub-territory to avoid Fourth Section violations. They also followed what the Commission did in Northbound Class Case, in Docket 1261; the Commission in that case put it theoretically, or 15 cents on first class higher than Atlanta, and Atlanta is in Atlanta sub-territory.

"Com. Eastman: I asked, because I thought that you used Columbus as an illustration of the kind of Fourth Sec-

tion relief you wanted on traffic from Ohio River Crossings.

"Mr. Tilford: We used Columbus and several other points to show the necessity for Fourth Section relief from the lower crossings, but I cannot remember the exact points now, but we ran into a number of Fourth Section violations in working out the adjustment from other Crossings, as against local stations on the Central of Georgia and Southern Railway, if we continued Columbus, Georgia, in Atlanta sub-territory. It was in Montgomery sub-territory. The line runs along the Central of Georgia, down the Chattahoochee River, and was the dividing line, and we broke the line a little bit different, and went through Columbus in Atlanta sub-territory. Generally speaking, of course, on that business from Cairo, it would naturally reflect the distance.

"Com. Eastman: Would not there be the same reason for doing it ordinarily on fertilizer?

"Mr. Tilford: Yes, and he has proposed it.

"The Witness: If there should develop that difference, we will of course give Columbus the adjustment which that requires us to do.

"Com. Eastman: You are proposing it in Montgomery sub-territory?

"Mr. Tilford: You are proposing Atlanta sub-territory?

"The Witness: No, sir; listed here as a Montgomery sub-territory point. It was simply taken out of the territorial directory, as that directory now carries it, and if it [fol. 408] should properly be in Montgomery sub-territory, of course it will have that basis in Atlanta sub-territory, it would be given that adjustment, when we come to publish these rates."

By Com. Eastman:

On Exhibit 159, which is a record of the Alabama Public Service Commission, I notice on page 4 it speaks of the generally favorable transportation conditions that surround the movement of fertilizer traffic. Now, was there any evidence in that proceeding in regard to transportational conditions surrounding the movement of fertilizer?

A. I don't recall any; no, sir."

I don't recall that the witness in that case who handled fertilizer undertook to show that there were any different

transportation conditions there than in Georgia or North Carolina, or in any of the other States. I had in mind fertilizer adjustment, when I spoke.

As to the Louisville & Nashville finding that fertilizer traffic is a particularly expensive traffic to handle: I have not gone into the question of expense beyond this one feature. I conferred with our superintendent of transportation, in respect to the matter of equipment, and he told me that as the fertilizer season approaches it is necessary for him, or the division superintendent to accumulate at these fertilizer manufacturing points enough empties to take care of the outbound movement of fertilizer. That the cars that are made empty at those points in the ordinary day's business at those stations, is not sufficient to take care of the fertilizer movement and all of the other traffic that is offering at those places at the same time. He also told me that a car that has been used for the movement of fertilizer cannot be used immediately for the transportation of certain other classes of traffic, such, for instance, as grain or [fol. 409] flour. That it either has to be kept out of that particularly kind of traffic, or it has to be thoroughly cleaned before it can be used again. I am not prepared to testify that fertilizer is the most expensive kind of traffic that we handle. I did not investigate or prepare myself on that point.

The purpose of Exhibit 195,—the last exhibit—is simply to show what the present rates are and what the rates will be from these points—from these Ohio River Crossings to representative points in Southeastern Territory under this proposed adjustment. (Tes. 496-501.)

[fol. 410] It is true that completed fertilizer, or commercial fertilizer, does not move according to the information I have, from these Ohio River Crossings to the destinations shown on this exhibit, but certain fertilizer materials, such as tankage and dried blood, move from the packing centers around Chicago and in the north, and cyanimid from Niagara Falls, and that is the kind of traffic that would move under these rates. So far as the application, actual application of these rates is concerned, they will be found almost entirely to apply to tankage and dried blood, and cyanimid, which are fertilizer materials. In proposing this adjust-

ment we have taken the list of fertilizer materials just as it now appears in Note 94 Exceptions to Agent Dulaney's Classification—I have forgotten the I. C. C. number. Except that we have eliminated from that list certain items such as phosphate rock and marl, and barnyard manure, and probably one or two other items on which we are not proposing the application of the Royster scale at this time. Now, it has been deemed proper in times past to put those items in the fertilizer list, and for the purpose of this revision we are not proposing any change. I might add that according to information that I have, a great many of those items are more valuable than the so-called commercial fertilizers. I should say that the average weight on some of the fertilizer materials is greater than on the commercial or the completed fertilizer. I have no direct knowledge as to cyanimid.

In Exhibit 167 I pyramided the scale of rates said to have not been found unreasonable by the Interstate Commerce Commission in the Mount Pleasant Fertilizer Case, 50 I. C. C. 253.

"Q. On page 257 of that report it is shown that at the time of the decision, the rates in effect were substantially the same as the rates which the complainant sought. I just wanted to show you the volume, and ask if you think in the [fol. 411] light of that fact, that the pyramid of the rates which the Commission did not find unreasonable, and which there was not any great reason at the time, more or less an academic question, so far as it would have been to have pyramided the rates which were naturally in effect, and which were voluntarily established by the railroad?

"A. It happens that I knew that the witness for the Southern Railway would make the comparisons of the rates which were in effect from Mount Pleasant to these points at the time the case was heard, and I did not make that comparison myself. I knew that there was an issue in that case, the reasonableness of the rates which were charged on the shipments which actually moved. The Commission did not condemn the rates which were charged on those shipments. They found them to be not unreasonable, and in my exhibit I have brought those rates forward under the several increases." (Tes. 501-504.)

All that was left in the case at the time the Commission decided it was the question of reparation. I think the applicant was seeking a reduction in the rates that were then in effect, as well as reparation on the shipments which actually moved at the higher rates.

Our Exhibit 195, showing rates from the Ohio River Crossings, and whether I regard the proposed rates there as reasonable for traffic originating locally at the Ohio River Cities: We are willing to apply those on traffic originating locally there; and from that standpoint I think we may say that they are reasonable rates.

They are made on the same basis of the Royster scale, from Louisville. As far as Louisville is concerned, we concede that is a reasonable rate, so far as carriers are concerned, for local movement from Louisville.

[fol. 412] That being so, I regard it also as a reasonable rate for application to through traffic coming from beyond Louisville; it would be a reasonable charge on all traffic, of course, we realize that when 13494 is out of the way, we may be compelled to publish joint through rates from the territory north of the Ohio River into the Southeast, somewhat less than Ohio River combination. But, of course we will take care of that situation when we reach it.

"Q. Well, even if the combination basis persisted, would not it be the fair and reasonable thing to do, to publish proportional rates somewhat lower than the locals to apply on the through traffic?

"A. Well, we may find it desirable to do that at some time in the future, but we feel that even with these rates as I have shown them on my exhibit, I used, and those rates will result in reasonable total charges to Southeastern destinations."

Turning to Exhibit 164: The Louisville & Nashville Railroad scale shown on that exhibit is our local unpublished scale of the Louisville & Nashville Railroad that we have used for a great many years in determining or in measuring our rates on fertilizer between points on our own lines. It forms the basis for the rates on fertilizer, applicable between points on the Louisville & Nashville Railroad, except where competitive conditions have compelled us to go lower,

or where the orders of the various State Commissions have compelled us to establish lower charges. (Tes. 504-507.)

I don't believe it is a fact that the Alabama single line scale with the standard railroads, on the average—taking into consideration the long distance rates, as well as the short distance, are fully as high as that scale. I have not made a calculation of the kind, but I wish in connection with that, you would bear this in mind, that fertilizer does not [fol. 413] move for the extreme distances covered by our own local scale, so that when you have prescribed rates within your State very much less than the rates on basis of our local scale, for the distance within which the preponderance of the fertilizer tonnage moves, we think you have done great violence to our interests.

It is a fact that the Alabama scale beyond 220 miles is generally higher than our so-called normal scale. There are instances, of course, in which your scale is less than our local scale. Our normal scale carries carload minimum weight of 15 tons; the Alabama scale carries a carload minimum weight of 20 tons, except some few items.

We have a good many rates on fertilizer between points on our line which are less than our local scale would produce for the same distance. Taking into consideration the difference in minimum weights loaded by our fertilizer scale, and the Alabama scale, and taking into consideration the specific rates lower than our scale, which we have thereby, and which are in effect today, I certainly do say that the Alabama scale creates any substantial prejudice or discrimination against interstate traffic moving over our railroad.

I called attention to several abrupt breaks at the State line in the fertilizer scale, and stated that I did not know any justification for them.

As to what justification we would have for the break of 34 cents per ton in your scale between 15 and 20 miles; 22 cents between 25 and 30 miles; and 34 cents between 40 and 45 miles: I think for those here you should take into consideration the very short hauls that you have on the traffic, and it is right and proper for the rates to break more violently than they do after you have hauled the stuff for a greater distance than in the cases to which I have called attention.

[fol. 414] I have taken the rates applicable on the Mobile & Ohio Railroad as I found them published in the tariffs. I don't know what you mean by investigation. I know what they are—I have shown them on my exhibits.

"Q. Well, is it not a fact that the standard interstate scale applicable on the Mobile & Ohio Railroad is lower than the Alabama Commission's scale?

"A. I would not want to commit myself to that. I have not made a direct comparison of the kind to which you refer, it may be.

"Q. I was just wondering why you did not carry around the borders of the State those illustrations of discrimination. You have left left off the Mobile & Ohio and the Illinois Central—what was the purpose of that?

"A. I think the reason I did that was because I did not find a fertilizer factory just a short distance across the State line.

"Q. Would you not have found the Alabama rates to be higher than the interstate rates on those railroads?

"A. I would have found some of the Alabama rates to be higher than a good many of the maximum rates, yes." (Tes. 507-510.)

I think they apply the same rates interstate as intrastate over there in a great many instances. I have filed an exhibit here showing that the scale that you prescribed last year resulted in material reductions or substantial reductions from the scale of rates which was in effect, or which it superseded. I don't know that there were numerous rates that were radically increased. I know that some rates were increased.

I have shown the rates from Nashville to all agency stations on our line between Nashville and Birmingham, and if you will refer to my Exhibit No. 169, you will find those [fol. 415] rates set out. Now, I do not see any rate on there from Nashville to a point into Alabama that is less for a corresponding distance than from Birmingham to a station in Alabama. I did not investigate the situation on the N. C. & St. L.

I spoke about the Illinois Central and the Mobile & Ohio, and said I thought the reason why I had left those out was because I could not find a fertilizer factory near the bound-

ary; the Mobile & Ohio runs from Corinth, and Corinth is one of the points used in the case of the Southern; I used Corinth versus Decatur on the Southern Railway. The Mobile & Ohio also runs from Columbus right near the border; it gets into Columbus.

I don't recall whether there is a fertilizer factory at Columbus, or not.

There you get into that so-called Meridian territory, where of course the Alabama scale does not apply from the Alabama manufacturing points. The only point remaining would be Columbus versus some Alabama points and Corinth. Versus Alabama points, by the Mobile & Ohio, I will be glad to supply those rates.

Referring to Exhibit 165, page 6 there: My comparisons with rates on the Illinois Central Railroad there, I have used the standard line scale in Alabama in showing the Alabama scale for those distances. I did not notice that the Illinois Central Railroad had been placed in the short line category in Alabama, and accorded rates about 20 per cent higher at that time, but I recall now that that is true. For me to show that rates actually in effect in Alabama on the Illinois Central, it would represent very material increases over other existing interstate rates; but that still would not prove that you desire a reasonable scale of rates, when you gave us your table last May. I would not condemn the value of this statement just because there are a few stations in Alabama on the Illinois Central to which [fol. 416] the rates are slightly higher than those I have shown on this particular statement.

"Q. Well, the Illinois Central is a party to the 13th Section complaint against Alabama. Would you condemn the Alabama rates as being prejudicial against the interstate rates, when they are about 30 per cent higher?

"A. I would have to work out those figures. I still think that condition would obtain." (Tes. 510-515.)

Exhibit 163: I think the proposed Disque scale is intended for both single line and joint line application and that the 9702 scale on fertilizer is divided into single line and joint line.

"Q. Is not that one of the biggest changes that Examiner Disque has proposed in those rates the merging of the two scales, with a slight increase on the average?

"A. You are asking me to cover a broad territory there, and asking me if that is not one of the biggest changes he has proposed. I don't know, I have not checked out all of the changes he has proposed in his report.

"Q. I am talking about the change in the fertilizer rates.

"A. He has proposed the Class E basis for application on fertilizer in his Southwestern territory."

I don't know whether that would be the most radical change or not, but the fact remains, he has recommended an increase in the rates on fertilizer in that territory.

I do not recall that he recommended any increase on cottonseed products; he did on canned goods. He has recommended an increase on canned goods and iron and steel articles, I remember that.

Throughout my exhibits comparing the Alabama scale with the existing interstate rates, I have not given any consideration to the difference in the carload minima; I [fol. 417] don't think that makes any difference, because average loading is now above the tariff minimum of 30,000 pounds. I don't know if it is a fact that nearly every standard line railroad operating in Alabama has a separate and distinct fertilizer scale, different from all the others; I have not made comparisons just of that kind. Some of them are the same, I have found, they have adopted the Georgia scale for application on certain portions of their lines, and where that is true, the scales of course are the same.

"Q. Is there any greater difference between the Alabama intrastate scale and the interstate scales which you have shown on these exhibits, than there is between the difference interstate scales themselves?

"A. Well, the exhibit will speak for itself, but that situation is one of the conditions that this revision will remedy or cure. I understand that not only the carriers themselves desire uniformity in the rates, but the fertilizer interests also want some uniformity."

My testimony and exhibits were directed to the rates on fertilizers and fertilizer materials. I did not specially take into consideration the rates on cottonseed products.

"Q. Your exhibits would not be exactly representative of the situation on cottonseed products, would they?

"A. Well, I could not say whether they would or they would not; I have not gone into those rates specifically." (Tes. 515-517.)

[fol. 418] Cross-examination:

I was speaking about Lexington, and its grouping with the Ohio River cities. I wouldn't say that on all northbound traffic to Official Territory that we give Lexington, for instance, a low rate; sometimes it takes the Cincinnati basis. I can't cite you any particular rate at this time where Lexington takes the Cincinnati basis northbound, but there are instances of that kind; for example, from Atlanta territory it takes the Cincinnati rate.

"Q. I am talking about traffic consigned to the Trunk Line Territory, is what I am talking about.

"A. Oh, you take the Trunk Line Territory, Lexington is on the Louisville basis, yes, sir, it is a 100 percent point."

It is on combination over Cincinnati to C. F. A. territory. I don't believe it will mean anything one way or the other to Lexington, whether we observe this grouping with Cincinnati, or whether we give it the benefit of its distance; I don't believe there will be any fertilizer shipped to Lexington, Ky., from the territory in the South from which that group basis will apply. If it wouldn't be of any benefit to Lexington it wouldn't be of any harm to the carriers. If there is a fertilizer factory erected at Lexington, and if any handicap exists in respect to that fertilizer, the carriers will give that consideration and make a change in that basis.

Fayette County, of which Lexington is the county seat, is quite a tobacco county; that is up in God's country. They don't use a lot of fertilizer in Fayette County; they don't have to use a lot of it. They use quite a bit of fertilizer in the tobacco growing section of Kentucky, but the tobacco growing section of Kentucky is not confined to Fayette County. It is not typical of the state and the tobacco growing section of the state. They don't use as much acid phosphate or complete fertilizer in Fayette

County as they do in some of the other counties of the [fol. 419] State. (Tes. 518-520.)

In my exhibits I showed certain rates on coal to the Mississippi Valley. The Nashville rate for 122 miles of $1.35 is on there. I don't recall saying that those fertilizer rates in Kentucky were missionary rates, but I am willing to term them as missionary rates. I did not use a 60-cent rate on lime for 70 miles on the Illinois Central—that is ground limestone—where we charge $1.10, as a comparison to justify the fertilizer rates. I made no comparison of that kind, because ground limestone is not in this case and we do not propose any change in the limestone rates. I used crushed stone and screenings, but not ground limestone. I don't understand screenings is ground limestone; I understand the screenings are the larger pieces of stone than the ground limestone. Our scale rates are the same on ground limestone as on screenings; I don't know whether the actually published rates as they appear in the tariff are the same or not; I can't answer right here. Exhibit 183 does not include ground limestone for agricultural purposes. I had forgotten the ground limestone rates were in there; we do make special rates on ground limestone for agricultural purposes in Kentucky; that action was taken at the suggestion of the Kentucky legislature some years ago. I don't think we complied with that suggestion in its entirety; I don't think we went as far as they wanted us to go. The Commission, so far as I know, has never prescribed a mileage scale for application on fertilizer in Kentucky; I can't answer here if they prescribed or fixed specific rates; so far as answering for the L. & N., it has never been done. (Tes. 520-523.)

That scale I have shown on fertilizer is quite an old scale, taking the percentage increases and decreases.

Referring to exhibit showing rates on fertilizer from Tupelo, Miss., and Birmingham, Ala., to Frisco stations between those cities, and as to whether the disparity between these rates is not due to the state-made rates in Mississippi: It is my understanding that the rates applicable in Mississippi generally are state-made rates. I base that on information I received from officials of lines operating in the [fol. 420] state of Mississippi. I have never seen any record

of an order of the Mississippi Commission that would justify that statement, it came to me in such a way as to lead me to believe that no investigation on my part was necessary to confirm it. The L. & N. does not keep a chronological history or record of practically all of their rates so that they can go right back to the first rate they had on a commodity; we introduce such statements but they are compiled for each and every case; almost naturally when we do make a chronological statement of a rate, we preserve that for future use, but in practically every case I have had to prepare in which a chronology was necessary, it had to be worked up from the beginning. So far as this question of state-made rates in Mississippi is concerned, I have no personal knowledge; I have only the information given to me from time to time by officials of other roads operating in Mississippi. I would have to rely on the testimony given by Mr. Sheppard in that state, who testified from the records of his railroad, and I think he also referred to a report of the Mississippi Commission.

My information is that the average value of ground limestone used for agricultural purposes is about $1.75 a ton; I recall some time ago, if I may say this, speaking to a railroad man who bought some for application on his farm, he told me he paid $1.50 a ton. I think generally throughout Southern Territory the rates on ground limestone are on a lower basis than the rates on fertilizer. I am not a farmer but I understand that ground limestone is used to put on sour land to sweeten the soil. I can't answer whether the application of lime to the soil requires from a ton to three tons an acre. (Tes. 523-525.)

By Mr. Quirk:

"Q. Mr. Cotterill is not here, and one of the commercial fertilizer concerns asked me to ask this question, who are directly interested in fertilizer material. Mr. Drescher, did you say that on the movement of fertilizer material from [fol. 421] Chattanooga, for instance, into Alabama, that the fertilizer concerns at Chattanooga had difficulty in selling in Alabama as compared with Decatur, because of the difference of about fifty cents in the freight rate?

"A. Well, if the freight rates would mean anything in the selling of fertilizer, it seems to me that Chattanooga would have some difficulty in selling it at those Alabama points, in comparision with Decatur; I think I called attention to the rate from Decatur to Scottsboro, 66 miles, where the rate is $1.65, and to the same point from Chattanooga, for 56 miles, the rate is $2.10; there is a difference of about 45 cents a ton in the rate."

It seems to me that in overcoming a difference in freight rates at a particular destination, the fertilizer factory would be handicapped to the extent of the difference in freight rates; now, whether or not that would mean anything to the farmer is another question. My own opinion is that when you get down to the farmer and the application of the fertilizer to the soil, the difference in the freight rates doesn't mean a great deal.

It is our proposal to apply the minimum weights in connection with each of the items in the fertilizer list, as shown in Mr. Menzies' exhibit No. 8, I think it is, and not the 30,000 pounds minimum throughout.

The basis proposed from the Ohio River crossings is to continue the present rate from Louisville to Jacksonville, either as a proportional rate or as a basing rate to be used in constructing through rates to points in Florida south of the River Junction Jacksonville line; from the other crossings, it is proposed to use the relative adjustment to which I have referred in my testimony as being applicable to the Atlanta Territory. The carriers are not proposing the present rates from all the Ohio River crossings to Jacksonville, but the present rate from Louisville, with relationship of the other crossings to Louisville that will obtain to Atlanta and other points in Atlanta subterritory, as I have explained. (Tes. 525-528.)

(Witness excused.)

[fol. 422] F. D. McConnell was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination:

I am connected with the Central of Georgia Railway as General Freight Agent, located at Savannah, Ga.

I have been in the traffic department of the Central of Georgia Railway since December, 1897, continuously, except during the period of Federal Control, when I was with the United States Railroad Administration. My testimony in this case will relate particularly to the interstate and intrastate rates in the state of Georgia. And in view of the fact that the carriers general position in this case has already been covered by other witnesses, I will very briefly refer to the intrastate rates in Georgia, and file some exhibits in support of the carriers' Thirteenth Section Application in connection with those rates. I will endeavor just as far as possible not to duplicate anything that has been previously submitted. Outlining briefly the history of the intrastate rates on fertilizer and fertilizer materials in the state of Georgia: The Railroad Commission of Georgia issued its first tariff effective May 1st, 1880, in which they prescribed Class K rates any-quantity on fertilizers. This scale began at one dollar for 10 miles, and extended in 10 mile blocks up to 350 miles; the rate for 50 miles being $1.60; for 100 miles $2.00; for 150 miles, $2.20; for 200 miles, $2.80; for 250 miles, $3.00; for 300 miles, $3.20; and for 350 miles $3.40, per ton of 2,000 pounds. By Circular No. 19, effective January 1st, 1882, the classification of fertilizer in Georgia was changed from Class K any-quantity, to Class K plus 20 percent, any-quantity. In referring to [fol. 423] this change, in its report submitted October 4th, 1882, the Commission said:

"After a trial, covering a period of several months, the Commission believed that their standard rate for transportation of manufactured fertilizers was, at that time, too low. This resulted from the great expense to the railroads, consequent upon storage, detention of cars, etc. In view of this, the Commission concluded to temporarily advance the rates on fertilizers, and accordingly issued said circular."

The next change was made effective January 1st, 1884, by circular No. 42, when the classification of fertilizer, carloads, was changed to Class "M," plus 20 per cent, carload minimum weight 20,000 pounds, and the former any-quantity rating being continued on less than carload traffic. This change reduced the carload rates for distances up to 80 miles in amounts varying from 4 cents to 28 cents per ton under the rates originally established in 1880, and from 24 to 68 cents per ton under the rates established in 1882. For distances over 80 miles the rates established in 1884 were slightly higher than those established in 1880, and somewhat lower than those established in 1882. (Tes. 528-530.)

In other words, although the Georgia Commission found and stated in 1882, that it had concluded that its fertilizer rates prior to that period were too low, and authorized some advances, nevertheless two years later or in 1884, the Commission reduced the rates in many cases to a level even lower than those in effect prior to 1882. While the rating of Class "M" plus 20 percent was in effect, the Georgia Commission issued its Circular No. 118 effective September 15th, 1888, and for distances below 100 miles divided the [fol. 424] scale into five mile blocks in lieu of the ten mile blocks, continuing the former rates for the even ten miles distances and reducing the rates for the intermediate five mile blocks.

The Commission, in its report dated November 1st, 1888, in speaking of the increased prosperity of the State, comments as follows:

"We think we may justly say that the Railroad Commission has, in some degree, contributed to this great result. We have, to the best of our ability, administered the wise law of the State impartially, in a spirit of conservation, and with due regard to the rights and interest of all. Our action hastened, we believe, to increase travel and business on the railroads, to promote confidence, to bring about a better feeling between the roads and the people, and to secure stability in rates—and has thus benefited the roads. We have prescribed low fares for travel, that great educator—low rates for naval stores, for lumber, for all articles manufactured in the State and the raw material used in their

manufacture, for cotton and other agricultural products, for provisions and fertilizers, and for the articles that enter into the daily wants of the people. We have thus endeavored to promote the railroad, the manufacturing, the agricultural, the commercial and all the business interests of the State."

That was on November 1st, 1888.

By circular No. 162, effective January 15, 1890, fertilizer, carloads, was reduced from Class "M," plus 20 percent, to Class "M," without percentage, resulting in a reduction of $16\frac{2}{3}$ percent.

[fol. 425] Effective November 15th, 1890, a slight increase was brought about in the rates for distances 300 miles and over by reason of a change in Class "M" rates. It is not clear from the record whether this was intentional, as it appears that it may have been the result of an error in transposing the Class "L" rates and Class "M" rates for distances 300 miles and over.

Effective October 15th, 1890, by Circular 171, the Commission prescribed a rule for constructing joint rates, which provided for the use of 90 percent of the local rates.

Effective July 20th, 1893, by Circular No. 228, certain short lines were allowed to add 10 percent to the Class "M" rates.

The final change was made effective January 1st, 1897, by circular No. 267, when rates were prescribed for all railroads in the State on basis of Class "M," less 10 percent. In referring to this change, the Commission, in its report submitted October 15th, 1897, said:

"All percentages above Standard Tariff were removed from fertilizers, and the rates made Class M less 10 percent, and Class K less 10 percent in carloads and less carloads, respectively, making an average reduction of the rates on fertilizers in this state of about 18 percent. The rates on cainit and cottonseed meal were reduced the same as those on fertilizers, or about 18 percent.

"The above enumerated reductions in rates (there being a number of other articles included) on the different commodities, when taken in the aggregate, make a heavy reduction in the revenues of the roads. While it is the policy

of the Commission to give to the people as low rates as can be made with justice to the roads, and while the board [fol. 426] is impressed with the fact that there are other commodities which seem to be heavily burdened, the Board has declined to grant reductions in a number of cases, stating that they could not justly make further general and material reductions in the revenues of the roads at this time; as some lines are now failing to pay their operating expenses and fixed charges under the rates at present allowed, while a large majority of them barely earn sufficient revenue to pay cost of operation and fixed charges. Under present conditions, any considerable reduction of the income of the roads would place many of them in circumstances likely to terminate in receivership."

By Circular No. 268, effective January 26th, fertilizer was exempted from the rule requiring the use of 90 percent of the local rates in constructing joint rates. (Tes. 531-534.)

Subject to the percentage increases under General Order No. 28 and Ex Parte 74, and the 10 percent reduction under "Reduced Rates 1922", the rates prescribed by the Railroad Commission of Georgia effective January 1st, 1897, are still in effect as maximum rates within the state of Georgia.

The low scale of rates which has been in effect on fertilizer in Georgia during the past 45 years has had its effect on fertilizer rates within other Southern states, as well as on interstate rates. On November 1st, 1888, the Railroad Commission announced that it had prescribed rates which in its judgment would promote the railroad, the manufacturing, agricultural, commercial, and all business interests of the state; and it was under those rates [fol. 427] thus prescribed in 1888, or substantially those rates that in 1897 the Railroad Commission found and stated in its report of that later date, that the majority of the railroads in the State of Georgia were threatened with bankruptcy. Following the statement that was made in 1888, the fertilizer rates were reduced first 10 percent and then approximately 18 percent. The anticipation of the Commission as to their rates promoting the railroad and agricultural interest of the state were apparently not real-

ized so far as the railroads were concerned; they say they came pretty near ruining them.

By Commissioner Eastman:

"Q. Well now, does that follow? What proportion of the business is intrastate, and what proportion of the revenue of those railroads was received from intrastate business?

"A. Well, I couldn't answer that, because we have got no information as to that."

I don't think it could be wholly attributable to the reduction in rates; probably at that time there was a depression all over—I don't think it is true as to all roads that at that time a lesser part of the revenue of the Georgia railroads came from intrastate traffic; some of them, I think the bulk of their traffic would be intrastate, while others it would be interstate. So far as the larger roads, and the more important roads were concerned, the bulk would be interstate. During the period of which I am speaking, there was effective control over interstate rates by the Interstate Commerce Commission.

"Q. Between 1888 and 1897?

"A. Of course, the Commission did not fix, the Inter-[fol. 428] state Commerce Commission did not fix the rates, the carriers—no, I think I am wrong about that, I don't think the Interstate Commerce Commission prior to that time fixed any rates for the carriers, I think they merely recommended."

They had no power to fix a rate for the future at that time. (Tes. 534-36.)

As a matter of fact in that early period, the majority of the railroads in Georgia were small lines; there have been some consolidations since that time, some lines have acquired other lines. Some of the lines were large, the Central of Georgia, of course, has acquired other lines in the state of Georgia since that time. The fact that they were small would not prevent them from carrying interstate traffic—not a bit. I pointed out that regardless of what was said by the Georgia Commission in its Circular of Jan-

uary 1st, 1897, at that time the Class M rates then in effect were still further reduced 10 percent. By an order of July 14th, 1921, the Georgia Commission required the carriers in Georgia to submit to it a scale of class and commodity rates for single and joint haul application that would remove the discrimination found to exist. In response to that order, the Georgia carriers on September 26th, 1921, submitted to the Georgia Commission class and commodity mileage scales, including mileage scales on fertilizer, and subsequently the Commission held hearings on these mileage scales, and on October 24th, 1923, the Commission submitted to the carriers and shippers, tentative mileage scales on fertilizer, and asked that on November 26th, 1923, interested parties appear before the Commission and submit criticisms of the mileage scales. Accordingly, representatives of the carriers appeared before the Com- [fol. 429] mission on November 26th, 1924, and asked the Commission not to adopt the scale which it had tentatively proposed, but in lieu thereof to aprove the rates less 10 percent submitted by the carriers on September 26th, 1921. On September 26th, 1924, the Commission issued an order prescribing mileage scale rates on fertilizer between points in Georgia to become effective November 15th, 1924. The mileage scale prescribed in that order was substantially less than the mileage scale tentatively suggested by the Commission for criticism. In compliance with the Commission's Order of December 26th, 1924, the reduced rates on fertilizer were published to become effective November 15th, 1924. Certain of the Georgia carriers appealed to the Federal Court for an injunction against the Georgia Commission, and the case was heard before Judges King, Clayton and Sibley in Atlanta on November 26th, 1924, and on that date the Federal Court enjoined the order of the Georgia Commission that had reduced the rates effective November 15th, 1924. The scale of rates covered by that order, that was in effect from November 15 until November 26th, is a part of the Thirteenth Section Petition dated November 16th, 1924. (Tes. 538-540.)

I have read the original petition and the amended petition filed by the carriers under Section 13 of the Act, and I will state that the allegations of fact therein contained are true to the best of my knowledge and belief.

I have prepared also a series of exhibits which I desire to offer in evidence in this record.

(The statements were thereupon received in evidence and marked "Carriers' Exhibits Nos. 196 to 206 inclusive.") [fol. 430] (The original petition filed on behalf of the Georgia carriers under Section 13 of the Act, dated November 16th, 1924, was received as Exhibit 207.)

(An amendment to the petition on behalf of the Georgia carriers, dated December 8th, 1924, was received and marked Exhibit No. 208.)

On December 11th, 1924, the Georgia Public Service Commission withdrew its order of September 26th, and it was thereupon that the carriers filed their amendment to the Thirteenth Section Application; it was to acquaint the Commission with what had developed subsequent to the filing of the first petition. That is why we amended that Thirteenth Section Application.

The rates that the carriers had proposed to the Georgia Public Service Commission were nothing more than the same scale that had been submitted to the Alabama Public Service Commission, as explained by Witness Drescher, that was substantially the Royster Scale, but not identically that scale, because the scale was built to end in 0, and 5 units. The carriers on September 30th, 1924, filed a petition with the Georgia Public Service Commission, and submitted in lieu of the scale submitted in 1921, the exact Royster Scale, asking the Commission to approve that scale, stating that the carriers had decided to proceed with the general revision of the rates on fertilizer and fertilizer materials between points in Southern Territory on the basis of the so-called Royster Scale for single and joint line hauls, as that scale had been prescribed by the Interstate Commerce Commission in several cases. Now, that brings [fol. 431] us, as far as the Georgia Rates are concerned, to a brief outline of the history of those rates today. To illustrate the successive reductions that were from time to time made, by giving reference to the scales as in effect in Georgia for given periods: For 10 miles on May 1st, 1880, the rate was one dollar; on January 1st, 1882, $1.20; on January 1st, 1884, 96 cents; on January 15th, 1890, 80 cents; on January 1st, 1897, 72 cents. For 50 miles, in 1880 the

rate was $1.60; in 1882, $2.00; in 1884, $1.44; in 1890, $1.20; in 1897, $1.08. For 100 miles, in 1880, the rate was $2.00; in 1882, $2.40; in 1884, $2.04; in 1890, $1.70; in 1897, $1.53. I think that is illustrative.

In other words, if you start at 5 miles, it is a fact that the rates made effective in 1897 were exactly one-half of the rates that were in effect in 1880, and if you get up to the higher distances, for example 50 miles, your rate in 1897 was 52 cents less than in 1880, and so on. (Tes. 540-44.)

The Railroad Commission of Georgia was one of the earliest Railroad Commissions that began to function in the Southern States. I have heard the testimony of previous witnesses as to the effect that the rates thus established at an early date by the Railroad Commission of Georgia had upon the rates established in other states of the South, notably Alabama. In other words, it was these rates fixed by the Railroad Commission of Georgia in 1897 that were adopted thereafter and prescribed in Alabama in connection with what is commonly known as the 110 Commodity Scale in that state; in 1907, the state of Alabama adopted the exact Georgia rates on fertilizer.

[fol. 432] "Q. Is there any doubt about the fact, as has been stated by other witnesses, that the low rates prescribed in Georgia had an effect also upon the rates prescribed in other states, such as South Carolina?

"A. While the Central does not operate in South Carolina, records which I have examined show that the Georgia Rates have influenced the rates in fifteen states.

"Mr. Gwathmey: And that has been covered.

By Mr. Perry:

"Q. What have you in the record to bring you to that conclusion?

"A. I got that information from the brief filed with the Georgia Public Service Commission.

"Mr. Perry: As a matter of fact, everybody knows in Georgia, if Mr. McConnell does not, that that was just the coincidental political upheaval in Alabama, that resulted, and they found what they thought was satisfactory in the Georgia scale."

"Mr. Perry: My question further is, you take it for granted that because the rates were lowered in Alabama and in South Carolina, that the action of the Georgia Commission some years previous was responsible for it?

"A. Well, the rates established by the Legislature of Alabama in 1907 on Fertilizer, the exact figures, were identical with the Georgia rates."

That is all I have; and I do not, based on that, say the action of the Georgia Commission was responsible for the trouble we have had; I say Alabama adopted the same rates as were in effect in Georgia.

"Q. But you stated the Georgia action had its influence in those other states; now, is that correct?

[fol. 433] "A. No, the result was, though, that they got the same rates."

I think the other states just said: "Well, Georgia has these rates, and we ought to do as much for them as Georgia."

"Q. Might it not be just as easy inferred that the rate war that you had on many years before had its final reflective influence in Alabama?

"A. They didn't have any rate wars just immediately preceding 1907." (Tes. 545-547.)

To show the measure of the rates on fertilizer between points in Georgia, as contrasted with the interstate rates, my Exhibit No. 196 shows rates from Savannah to 33 stations on the Central of Georgia Railway in Georgia, for distances ranging from 22 to 245 miles, contrasted with the present and proposed rates from Savannah to stations on the Southern Railway in South Carolina for similar hauls. The Central of Georgia Railway extends out of Savannah into Georgia in a northwesterly direction, while the Southern Railway extends out of Savannah into South Carolina in a northeasterly direction. This exhibit shows that the present rates from Savannah to Georgia points are in every instance less than the rates from Savannah to South Carolina points for corresponding distances; that the carriers' proposed scale results in increasing the present rates from Savannah to Georgia points in amounts ranging from 11 to 45 cents per ton, while the carriers' proposed scale

would reduce the rates from Savannah to South Carolina points by varying amounts up to 45 cents per ton.

[fol. 434] Exhibit No. 197 shows the present and proposed rates from Savannah to 20 stations on the Seaboard Air Line Railway in Georgia for distances ranging from 82 to 257 miles, contrasted with the present and proposed rates from Montgomery, Ala., to 20 stations on the Seaboard Air Line Railway in Georgia. The Seaboard Air Line Railway extends from Savannah to Montgomery, the distance from Montgomery to the Georgia State line being approximately 80 miles. This exhibit shows that the present rates from Savannah are in every instance less than the rates from Montgomery for similar hauls, and that the carriers' proposed adjustment would result in increasing the rates from Savannah in amounts ranging from 11 to 45 cents, while from Montgomery the carriers' proposed scale would reduce the rates in amounts ranging from 33 to 56 cents per ton. Those are domestic rates out of Savannah. We have import rates only to fertilizer manufacturing points. I don't think they would be lower to any of these points, because Savannah would be the key port in fixing the import rates. In fact, I don't think there are any import rates from Savannah to any of these points named here, because they are not fertilizer manufacturing points. (Tes. 547-549.)

Exhibit No. 198 shows the present and proposed rates from Augusta, Ga., to 27 stations on the Georgia Railroad in Georgia, contrasted with the rates from Augusta to 27 stations on the Southern Railway in South Carolina for distances ranging from 5 to 171 miles. It will be noted that the present rates from Augusta to Georgia points are in every instance less than the rates from Augusta to South Carolina points for similar hauls; that the rates which the [fol. 435] carriers propose would increase the rates to Georgia points in amounts ranging from 11 to 45 cents per ton, while to South Carolina points, with the exception of Warrenville, the carriers' proposed scale would result in numerous reductions ranging in amounts up to 45 cents per ton. The Georgia Railroad extends from Augusta westwardly, while the Southern Railway extends east from Augusta.

Exhibit No. 199 shows the rates from Macon, Ga., to 14 stations on the Central of Georgia Railway for distances

ranging from 102 to 237 miles, compared with rates from Macon to 14 stations on the Central of Georgia Railway in Alabama for similar distances. The distance from Macon to Alabama-Georgia state line on the Central is 100 miles. This exhibit shows that the intrastate rates are in every instance lower than the interstate rates for similar hauls; that the carriers' proposed adjustment would increase the intrastate rates in amounts ranging from 11 to 34 cents per ton, and reduce the interstate rates in varying amounts up to 45 cents per ton.

Exhibit No. 200 shows the present and proposed rates from Columbus, Ga., to 24 stations on the Central of Georgia Railway in Georgia for distances ranging from 4 to 145 miles, compared with rates from Columbus, Ga., to 24 stations on the Central of Georgia Railway in Alabama for similar distances. This exhibit shows that the level of the interstate rates is higher than the intrastate rates, and that under the carriers' proposed adjustment, the intrastate rates would be increased from 11 to 45 cents per ton, while the interstate rates would in the majority of cases be reduced by varying amounts up to 23 cents per ton, and in [fol. 436] only one instance would there be any increase.

Exhibit No. 201 shows the present and proposed rates from Atlanta to 19 stations on the Central of Georgia Railway in Georgia, compared with the rates from Birmingham to 19 stations on the Seaboard Air Line Railway in Georgia, for distances ranging from 96 to 275 miles. It will be noted that, except in the case of from Birmingham to Atlanta, which is a subnormal rate, the interstate rates are substantially higher than the intrastate rates; that the carriers' proposed adjustment would increase the intrastate rates in amounts ranging from 11 to 45 cents per ton, and would reduce the interstate rates in some instances as much as 56 cents per ton.

Exhibit No. 202 shows rates from Atlanta to 25 stations on the Southern Railway in Georgia, compared with the rates from Atlanta to 25 stations on the Southern Railway in Alabama.

Exhibit No. 203 shows rates from Albany to 26 stations on the Atlantic Coast Line Railroad in Georgia, compared with rates from Dothan, Ala., to 26 stations on the Atlantic Coast Line Railroad in Georgia, for distances ranging from

23 to 199 miles; the intrastate rates are in every instance less than the interstate rates, and the carriers' proposed scale would increase the intrastate rates in amounts ranging from 11 to 45 cents per ton, and reduce the interstate rates by varying amounts from 11 to 56 cents per ton.

Exhibit No. 294 shows intrastate rates compared with interstate rates to a destination that is midway between two fertilizer manufacturing points, one being in Georgia and the other in another state. This exhibit shows that [fol. 437] to Hamby, Ga., which is a point on the Central of Georgia Railway between Rome and Chattanooga, the carriers' proposed adjustment is the same as the present rate from Chattanooga; that the rate from Rome is 34 cents per ton less than is the rate from Chattanooga for the same haul. (Tes. 550-552.)

I mean the present intrastate rate from Rome. Now, Bancroft, Ga., that is a station on the Central that is midway between Albany and Dothan, with fertilizer plants at both Albany and Dothan. The exhibit speaks for itself. Those are rates from fertilizer manufacturing points; every point of origin is a fertilizer manufacturing point. They show the disadvantage under which the interstate shipper is laboring at the present time, as compared with the intrastate shipper, and show also what the carriers' proposed rates will be both interstate and intrastate.

The scale applicable in Georgia on intrastate traffic has filed by previous witnesses, and I will not file or duplicate by another exhibit. In Georgia, there is no mileage scale for joint line application on fertilizer; the mileage scale applies for single line hauls, and for joint line hauls the rates are made on combination. Now, to show the effect of the carriers' proposed joint line mileage scale as to the present combination rates, my Exhibit No. 295 shows the joint haul rates over two lines, computed on the available combination hauls in multiples of 5 up to 150 miles, and in multiples of 10 for distances over 150 miles; then the carriers' proposed joint line scale for the total distance of the haul.

[fol. 438] Exhibit No. 296 is a companion exhibit, which shows the maximum and minimum rates in Georgia for joint hauls over two lines, compared with the proposed joint line mileage scale. Those are all the exhibits that I had.

"Q. Now, Mr. McConnell, please state whether or not the interstate shippers of fertilizer under the various interstate rates which you have shown in this exhibit come into direct and actual competition with those who ship under intrastate rates?

"A. No sir, they must——"

There is no such dissimilarity in the transportation or circumstances and conditions surrounding the handling of intrastate traffic on the one hand as compared with interstate traffic on the other than in my opinion would justify a difference in rates; I know of no transportation condition that warrants a different rate when a state line is crossed. The Central of Georgia is rather an important road in Georgia; the percentage of the total tonnage of the Central of Georgia Railway Company that is composed of fertilizer is 3.12. That does not include materials.

2.45 per cent of the total revenue of the Central of Georgia Railway is derived from fertilizer. I might say this, that our average revenue on fertilizer, now, this is not in Georgia, this is the system, is $1.71 per ton, the average haul is 100.67 miles; and the average revenue on all traffic is $2.18 per ton, and the average haul is 183.48. That is for the year 1924. (Tes. 552-55.)

[fol. 439] Cross-examination:

Speaking of the financial conditions of the roads in the early nineties and the latter eighties, notwithstanding the statement I have made as to receiverships, our Georgia business has always been fairly comparable with other Southern States or states in this territory generally. Georgia has always been one of the Central's best states from a revenue producing point of view. I am talking about the Georgia business, both inter and intrastate. I did not mean to say that the Georgia Commission had worked hardships; I was quoting there what they said in their report. I did not mean to create the impression by my testimony that the regulations so far as Georgia is concerned were responsible for the various receiverships in the nineties. This evidence was offered to just give the chronological history of the rates on fertilizer in Georgia from 1880 up to the present time. So far as the revenue of the rail-

roads in Georgia is concerned, we would like to have more revenue; we are not earning more than our amount fixed. We are not exceeding the allowance.

I know that in 1893 there was a great depression all over the country and a panic. The Georgia Commission of course had very little to do with that; that was a national panic.

At this time in publishing rates ordered by state authorities we give reference to the orders prescribing the rates; we are required to do it in Alabama, but some years ago that was not the custom. It was not the custom in Georgia very thoroughly; some years ago the Georgia Commission ordered us to give reference to their orders when publishing rates. Carriers don't keep such records for their own benefit; when we receive an order of that kind we usually complete the file by making a memorandum that the order has been complied with. I have no evidence about under what authority those rates I testified to in Georgia were established; the history I gave was taken from the reports of the Georgia Commission. The present Georgia rates, reflecting the G. O. 28 and Ex Parte 74 advances and the reductions of 1922, have been in effect since January 1, [fol. 440] 1897. (Tes. 555-558.)

The rates that I gave as in effect from 1880 to 1897 applied to the Central of Georgia. I think it is true that at some time in there certain lines were allowed a percentage above the table, because the Commission referred in 1897 to the fact that all percentages above the standard tariff were removed, and the inference is that there were certain lines that were given, such as the short lines, the percentage increase.

I do not know how long the rates shown on Exhibit 196 from Savannah to various destinations in South Carolina have been in effect. Our proposed rates reduce those Savannah South Carolina rates. That is not an assumption that those South Carolina rates are too high; the scale as proposed by the carriers would be a leveling process. I don't think the present rates from Savannah to South Carolina are unreasonable at all. I know that the Savannah people do ship extensively into Carolina, but I don't know of a movement to any particular point, but all these stations are in an agricultural section. On Exhibit 197, show-

ing there Savannah to Seaboard Air Line stations, including practically all of the agency stations from Vidalia to Omaha: There was no reason for omitting Cordele and Americus. Dawson is on a branch of the Seaboard—I don't know if it is; I did not prepare these exhibits myself, I had those prepared though. I know of no movement from Montgomery to those particular stations, because they are on the Seaboard, but I know there is a movement from Montgomery to points in Georgia on the Central, and these stations are in the same common territory. They move from Montgomery right into the territory of the fertilizer plants at Albany, Dawson and Americus. (Tes. 558-560.)

"Q. Now, your Exhibit No. 199, there you are comparing rates from Macon to various Central of Georgia Stations on your Chattanooga division, with rates from Macon to Alabama stations between Columbia and Andalusia; is there any movement from Macon to those Alabama stations?
[fol. 441] "A. I couldn't answer that there is a movement from any of these points to any of these stations, but there is no reason why there shouldn't be, because they are all in the Agricultural section, and Macon is a large manufacturing point."

There is fertilizer manufactured at Columbus; I don't think there is a complete fertilizer plant at Union Springs. We have a plant at Eufaula. Eufaula into Georgia is the Georgia rate; Eufaula and Columbia, Ala., have ever since I have been in the railroad business taken the Georgia intrastate rates. We carry a lower level of rates from Eufaula into Georgia than we do from Montgomery into Georgia.

On Exhibit 204, I make comparisons with various midway points and I have a comparison there between Macon and Leesburg and Dothan and Leesburg. I do not know of any movement from either Macon or Dothan to Leesburg, but I will be very glad to furnish a statement showing whether or not there has been a movement from those points to those destinations; I am quite satisfied that they will show a movement to a great many of them.

I haven't the segregation of our fertilizer movement between inter and intrastate; we have that, I am quite sure; I think the accounting department gets out a statement of that kind, but I haven't it with me.

I have no information that would reflect the amount of movement over a joint line or single line haul in Georgia; the rates made by the single line scale I know are by far the rates that move the bulk of the traffic. I don't know how much. It is true that our revenue in Georgia would be less on a joint line haul under the proposed scale than we now get on the joint line haul: It would reduce the joint, where the rates are made on joint haul on combination, the proposed scale would reduce those rates. It is fair to say that I am satisfied that the bulk of the traffic that the Central would handle in Georgia would be on the single line scale and not on the joint line scale. It would be just a wild guess, any figure I might say, but I feel confident that is [fol. 442] the more important traffic. (Tes. 560-564.)

The movement of imported fertilizer materials to the interior mixing plants is rather substantial and that tonnage is valuable to the carriers.

"Q. I believe it is proposed to apply that material on the domestic scale with a port equalization scheme?

"A. The idea as I understand it is to follow largely the present scheme of making those rates, the present rates were made by taking the domestic rate from the key port and then making the relationship to other ports."

That is also under the proposal. There may be instances where the rates from the ports now are lower than the domestic rates to those mixing plants, but I think largely the imported fertilizer materials rates, speaking of Savannah, now, are the domestic rates, and in numerous instances the domestic rate from Savannah, because that is the controlling port, in other cases it might be Brunswick or Jacksonville. Kainit and acid phosphate are materially lower than our domestic rates on fertilizer; in Georgia kainit and acid phosphate take 80% of the fertilizer rates, and I think that has been extended to the other ports somewhat; I think probably Jacksonville and Charleston. I don't think the increases proposed are so substantial that it would affect

the movement at all; of course if fertilizer is sold on the port basis, the more the port cost is the more has to be absorbed. I don't think that the movement, transit movement of mixed feeds, fabricating steel, etc., and the moving of fertilizer to the interior and reshipping it, are comparable. We have not, that I know of, been approached by the interior mixers for transit arrangements at such points. (Tes. 564-566.)

Witness Menzies' Exhibit No. 3 shows the rates from Savannah to situations on the Seaboard and A. C. L. in South Carolina, and shows that the present rates are higher than the proposed rates. I have no information insofar as the rates from Augusta are concerned. I have no exhibit on our C. of Ga. Ry. rates from Montgomery to Georgia [fol. 443] stations; I suppose the reason that they took the Seaboard is because it is the direct short line from Savannah to Montgomery. Our line into Georgia from Montgomery is a little circuitous; we have to come around via Macon—No, we don't have to come through Macon to get into Georgia, we get into Georgia at Eufaula; you are speaking of the rates from Montgomery to Georgia stations on the Central of Georgia Ry. We do not publish the Georgia scale from Montgomery to Georgia stations. There is a fertilizer plant at Opelika; we carry rates from Opelika to Georgia stations;—They are on a higher basis than the Georgia basis. (Tes. 566-568.)

I stated in the beginning that the Georgia Commission started the general investigation under a rule issued in 1921, and hearings began in September. Since then the Georgia Commission has made a revision on a good many commodities—sugar, and canned goods, and brick and clay products, and readjusted the class rates. I don't know that all of those readjusted orders that have been issued so far have been for the benefit of the carriers; I think that in some instances they have, and I think probably in others it would result in a reduction in revenue. I do not recall any of those orders that would cause a reduction in revenue. On the canned goods it reduced certain rates and increased others; it increased the rates largely to the so-called basing or common point, put them on a mileage scale. I guess the larger movement is to the basing points. The Commission has revised the rates on sugar; that represented consider-

able increases. I think that would show some increase in the carriers' revenue. Just recently the Commission has issued orders on logs which represent considerable increases. I don't know about the sand and gravel scale; I haven't analyzed that myself to know what would be the actual result. (Tes. 568-569.)

[fol. 444] Redirect examination:

I do not want to be understood as saying that the carriers attributed their condition in 1897 solely to the rates that had been fixed by the Georgia Commission prior to that time. I did not mean to make the inference that the rates so prescribed was the reason for many of the carriers being in the hands of receivers, but merely that the Commission's own statement indicated that it probably attributed to that condition in the language that they used in their report of October 15th, 1897, where they state: "As some lines are now failing to pay their operating expenses and fixed charges under the rates at present allowed." Now, I did not mean that statement to carry the idea that the rates under which the carriers operated were the only cause for that condition.

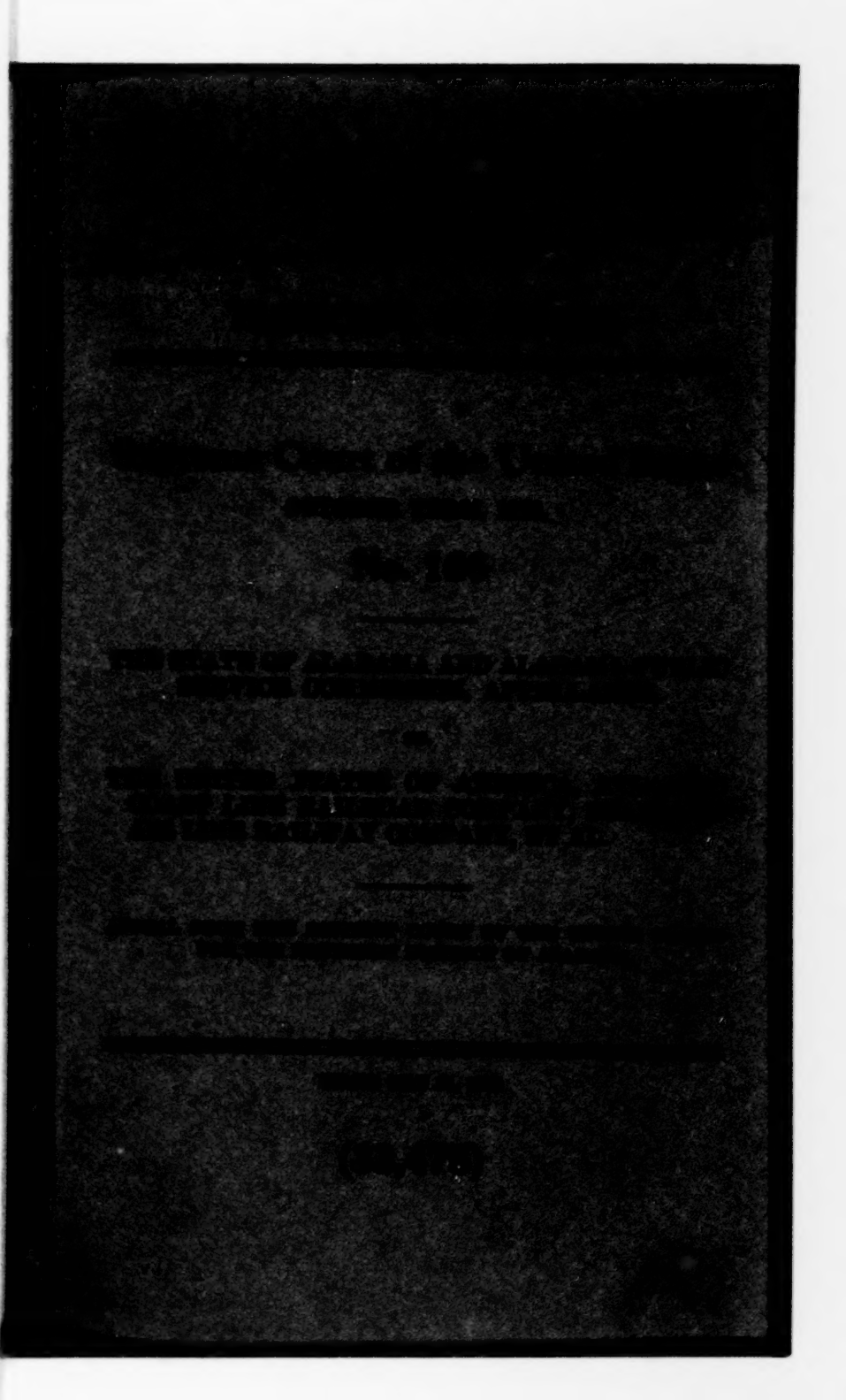
"Q. But you did not, on the other hand, intend to be understood as saying that the revenue which the carriers were deriving from their intrastate traffic in Georgia was not a contributing circumstance to that condition, did you?

"A. I think that is a fair conclusion to draw from the Commission's statement."

As I construe their report, I have given reference to the language used by the Georgia Commission in its report as indicating that it itself recognized that situation.

Prior to 1897, the carriers practically made their own interstate rates. Not knowing what the movement was at the time, I couldn't say whether the volume of intrastate traffic was really small as compared with the interstate. I think it true that it was less than the interstate. (Tes. 570-571.)

(Witness excused.)



(33,475)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 166

THE STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, ATLANTIC COAST LINE RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA

VOLUME II

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[fol. 445] J. H. KETNER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

I am connected with the Seaboard Air Line Railway Company, as General Freight Agent, headquarters Norfolk, Va. I have had quite a number of years experience in connectoin wth traffic matters in the South; with southern lines' traffic departments nearly twenty-five years. I wish to make a very few comments about certain features of the case, and especially dealing with the interstate and intrastate rates in the state of Florida. Just to connect up the record, Mr. McConnell was asked by Mr. Perry I think of the Georgia Commission, as to the influence the Georgia intrastate scale of fertilizer rates had on the Alabama intrastate scale. During the period of change in Alabama, I happened to be commercial agent of the Seaboard at Montgomery, Ala., and was over the state pretty generally in my duties, and I know positively that the State Commission and the Governor of the state were being urged to adopt the Georgia Rates; the claim being made that the Alabama Commission was not taking care of its shippers as well as the Georgia Commission was; and therefore the scale in Georgia did have its direct influence on the scale adopted in Alabama.

The Witness McConnell was also asked as to the movement of fertilizer from Savannah, Ga., to South Carolina destinations in connection with one of his exhibits. By the Seaboard Air Line Railway, the movement for the season of 1924, January to May inclusive to all stations was 74,000 plus tons; 31 per cent of this, or something more than 23,000 tons went to destinations in South Carolina. From Montgomery, Ala., via the Seaboard to all stations, we had a movement of in round figures 3,000 tons, and 11 per cent of this went to stations in Georgia. From Columbus, Ga., to all stations, the movement was something over 6,000 [fol. 446] tons, and 30 per cent of this movement went to destinations in Alabama. So that there is relatively a substantial movement to the adjoining states. (Tes. 571-573.)

As stated, I was designated to testify as to the adjustment in Florida, both the intrastate and the interstate adjustments to and from Florida. I have heard the testimony of previous witnesses dealing with the general questions and the justification of the reasonableness of the so called Royster Scale, now being proposed by the carriers for general application in the Southern Region, and I will attempt to avoid duplicating of same. However, supplementing the testimony that has already been given as to the history of the Royster Scale, I would like to state that I took active part in the several hearings in that case that is in the Royster case, finally resulting in the Commission's report and order in 50 I. C. C. 34. I was a witness for the carriers in those cases, with the exception of the first case, but I was present and worked up the testimony of the Seaboard in all three of the hearings, and I testified in the last two hearings. It is my sincere belief that, except for coercion exercised in connection with the last hearing, we would today have the Royster Scale substantially higher than the present scale, both for interstate application from Norfolk to North Carolina points and from Charleston to North Carolina points, and from Wilmington to North Carolina points, on basis of the first scale found reasonable by the Commission in 31 I. C. C. 458, and reaffirmed in 38 I. C. C. 190; I am sorry that Mr. Dashiell is not here, as he was the witness for the complainant in that case, and I think he could verify what I have to say. In the third hearing the complainant and the carriers were prepared to make out a convincing Shreveport Case, justifying the Commission in ordering a revision in the intrastate rates applying from Wilmington to North Carolina points, the complainants having expressed themselves as being entirely satisfied with the level of the rates found reasonable [fol. 447] by the Commission in its original report, which was at that time I believe the same as the North Carolina intrastate scale, and it was the purpose of the complainants to so express themselves in the hearing in that case. I understand that the Commission's first decision in that case, I think possibly Mr. Gardner has touched upon it, the North Carolina scale was reduced, and it was apparent that it was in the nature of a retaliatory measure, but I think that has been denied, but it was an odd coincidence that it fol-

lowed so closely upon the Interstate Commerce Commission having fixed those rates, the rates from Norfolk into North Carolina, that there was appointed that North Carolina Commission, what was known as the Justice Commission, which was a commission appointed by the Governor, and that that commission then reduced the North Carolina intrastate scale. You spell that J u s t i c e, I think it is a misnomer. In the hearing, this is the third hearing of the Royster Case, the state of North Carolina was represented by Ex. Governor Cameron Morrison, then Attorney-General of the State, that is Ex. Governor now, who was at that time Attorney-General of the State, and two members of the North Carolina Corporation Commission were also present. I have not read the record in that case, the transcript, but I have recently read the report, and what I have to say is largely borne out by the Commission's report. During the progress of the hearing, the North Carolina representatives learned of the attitude of the complainants, namely, that the complainants would not further attack the reasonableness of the rates under Section 1, but would rely entirely upon Section 3, joining the carriers in that respect. Mr. Morrison openly stated to complainants counsel and witness that if they did not change their position and urge the Interstate Commerce Commission to adopt the reduced North Carolina Scale, the North Carolina Farm interests would boycott the Norfolk Fertilizer producers. As a result complainant attempted to withdraw his com- [fol. 448] plaint, as indicated at Page 40 of the Commission's report 50 I. C. C., and on cross-examination, that is, the carriers' cross-examination, of complainant's witness, in an effort to obtain an admission from complainant's witness that the original scale of rates established by the Commission was in his opinion reasonably low per se, the only answer he would make was that either the removal of the discrimination by advancing the North Carolina intrastate rates or the reduction of the rates from Norfolk would satisfy his complaint. (Tes. 573-576.)

I know personally the facts about a threatened boycott; I heard the conversation myself, there was apparently no secret about it, as it was discussed in the hearing room, I don't think that part of it was in the transcript of testimony, but I know it of my knowledge.

For the purpose of showing the importance of the fertilizer movement to the Southern carriers, Witness Gardner filed Exhibit No. 40, in which he included the S. A. L. Railway, and showed for the year 1923 that our fertilizer tonnage was 680,140 net tons and that the fertilizer tonnage was 4.54 per cent of the total tonnage. In this exhibit I think Mr. Gardner has made his exhibit overly conservative in that he failed to include the tonnage under the Classification of Chemicals and Explosives of 309,840 tons, or 2 per cent of total tonnage, being a total ratio of 6.54 per cent of the total tonnage on the Seaboard. Under the Interstate Commerce Commission's Order of December 1st, 1919, prescribing classification of commodities carried and to be reported to the Commission, Commodity Group 66 covering chemicals and explosives—includes such important fertilizer and fertilizer materials as acid phosphate, nitre cake, potash, nitrate of soda, etc., and on the Seaboard Air Line Railway the majority of the movement under this Classification consists of acid phosphate and nitrate of soda, and should, in my opinion, be included in this statement. I think [fol. 449] this will likewise apply to the majority, if not all the other lines, shown in this exhibit. There has been some suggestion that the Commission has changed that classification, but I don't think it has so changed it as to eliminate acid phosphate and nitrate of soda; in fact our auditing department recently advised us that those two articles were still in that classification, and represented the larger part of the movement under that classification. If those articles are included, the ratio to the total tonnage, so far as the Seaboard Air Line Railway is concerned, would be 6.54 per cent, instead of 4.54 per cent. (Tes. 576-578.)

On the question of the average consumption of fertilizer per acre, much has been said about the average consumption of fertilizer per acre in Southern Territory and I have attempted through several sources to ascertain fair and representative figures on this question, endeavoring if possible, to show the actual average application of fertilizer to the cultivated acre, eliminating that portion of improved farm lands not under cultivation. In an article by Mr. William D. Hurd, indicated as Director of the National Fertilizer Association, on "Report of the Work of the Soil Im-

provement Committee" of that Association, appearing in the American Fertilizer Handbook for 1924, and in a graphic included in this article it shows the average pounds used per crop acre, arrived at by taking the total consumption of fertilizer sold in each state, divided by the total acres of harvested crops in 1922. It seems to me this brings it down to a fairer average consumption per acre than any figures I have seen.

Taking Witness Menzies' Exhibit No. 10, and supplementing same with these figures for 1922, it shows an average consumption per acre in North Carolina 265 pounds; Virginia 185 pounds; South Carolina 189 pounds; Georgia 102 pounds; Florida 534 pounds; Alabama 69 pounds; Mississippi 37 pounds; Louisiana 40 pounds; Tennessee 26 pounds; Kentucky 27 pounds.

[fol. 450] We are advised by the State Agricultural Department that in the year 1924 with 2,500,000 acres under cultivation, there were 365,317 tons of fertilizer consumed, resulting in an average of 292 pounds per acre. Of course, this does not mean that some of the crop acres got this portion of fertilizer, some crop acres possibly did not get any fertilizer, as one witness was on the stand and testified that he did not use any nitrate of soda on his farm; but this is the nearest actual average that I could find.

As to whether I think that getting at the average pounds used per acre on farm lands in a state is really a fair way to determine what it is going to cost the farmer for the use of fertilizer in Florida: Well, as I say, I tried the best I could to find out some fairly representative actual average application of fertilizer to the crop or the acre, and that this application on the harvested crop basis is the nearest we can get down to it on the general average. I know, of course, under some vegetables they use an excessive amount of fertilizer, and force the vegetables.

"Q. Mr. Ketner, haven't you sufficient acquaintance with Florida to know that there are thousands of acres of land in Florida that there is no fertilizer used on at all, and in that portion of the state where they pretend to use fertilizer, they use from a ton to five tons to the acre?

"A. No, that is in connection with the vegetable produc-

tion, the tomato production on the sea coast and the vegetable production in the Manatee section, I of course know that they use an excessive amount of fertilizer to force the vegetables." (Tes. 578-580.)

I don't think there is any question about the vegetable and citrus production using more than all the balance of the crops put together, and I know personally of some growers down there that do not use from a ton to 5 tons to the acre.

[fol. 451] "Q. So that really we don't get at the true result, we strike an average of all the results, but we don't get the true result?

"A. Unfortunately, as I say, I tried to get some fairer average. There is no question about that."

I want to make some statement in regard to the list of articles and the carload minima as proposed under the Royster Scale. So far as the Seaboard Air Line is concerned, I would like to clear up one point on which there seems to be some doubt, and that is as to the list of commodities and carload minimum weight to be applied on same in connection with the application of the proposed Royster Scale. Where the Royster Scale is now applicable it covers list of commodities as embodied in Note 94, Exceptions 4, to Southern Classification; and this list amended eliminating phosphate rock and manure was filed as Witness Menzies' Exhibit No. 8. Under this list, the carload minimum weight will not uniformly be 30,000 pounds, but will be the minimum as specified in the descriptive list. It should also be understood that this list of articles is not to be taken as being crystalized for all time to come and that changed conditions may not make it necessary to add to or take from this list. This may be true of cottonseed meal, which is now included in the list as taking fertilizer rates. It is not unreasonable to assume that science in the future may find other uses for some of the articles now included in this list that will make it highly improper to continue the application of fertilizer rates on same.

The term "fertilizer" in Florida embraces an extensive list of articles rated Class "M," applying in cents per ton

of 2,000 pounds, and applicable to carloads and less than carload with some few exceptions, where a carload minimum weight is specified. I will here refer to Carriers' Exhibit No. 209, which is a statement showing the present Florida Classification rules and ratings on articles described [fol. 452] as fertilizer and fertilizer materials. A number of the articles embraced in the term fertilizers are also included in the list of fertilizer materials. Under the Florida Classification, fertilizer materials, as listed, are rated 75 per cent of Class "M" in connection with carload minimum weight of 30,000 pounds. The Class "M" rating on fertilizer substantially as in effect today, dates back a great many years. According to our records this rating was shown in Florida Classification effective as of December 2nd, 1899; however, I am not prepared to say that it was not also in effect sometime prior to that date.

Now, as to the history of the fertilizer material rating of 75 per cent of Class M, the Classification rating of 75 per cent of Class M on fertilizer materials in Florida is of a much more recent date. The Florida Railroad Commission by due notice to the Florida carriers, under date of July 27th, 1910, called a hearing at its office in Tallahassee, Fla., August 11th, 1910, "to hear and consider whether or not we, that is, the Commission, ought to make changes in our Florida Classification No. 3, as follows:

By making fertilizer material; viz,

Brimstone, carbonate of potash, manure salts, german soda, grape pomace, cainit, muriate of potash, nitrate of soda, nitre cake, sulphate of potash sylvinit and sulphate of ammonia, one half of M, Class M being the then existing rating accorded fertilizer under the Florida Classification. This hearing was attended by the officials of the principal lines in Florida and by representatives of the Ocala Fertilizer Company, Ocala, Fla., and the Southern Fertilizer Company of Orlando, Fla. The carriers' representatives offered strenuous objections to the drastic reduction as proposed in the citation for hearing, and in an effort to reach some compromise, suggested a basis of 75 per cent of Class M in connection with carload minimum of 50,000 pounds, to apply on a list of fertilizer materials then [fol. 453] moving intrastate in North Carolina on basis of

90 per cent of the fertilizer rates, subject to a carload minimum weight of 50,000 pounds. This list being acid phosphate, in bulk; sulphate of ammonia; dried blood; bones, castor pomace, in bags; fish scrap; hardsaltz, in bulk; hoof meal, in bags or in bulk; kainit, in bulk; bat, bird or sheep manure, in bags or in bulk; muriate of potash; sulphate of potash, rotten slate, nitrate of soda; sylvinit and tankage. However, it should be stated this suggested compromise was not concurred in by one or more of the important Florida lines.

Following this hearing, and under date of August 19th, 1910, the Florida Commission issued its order No. 306, to become effective on September 6th, 1910. Copy of same is filed as my Exhibit No. 210. (Tes. 580-584.)

(Certain statements were thereupon received in evidence, and marked "Carriers' Exhibits Nos. 209 to 219 inclusive Witness Ketner.")

The third section of this exhibit has reference to fertilizer materials, there being several other matters included in this same hearing covered by the same order. It will be noted this order included a great number of articles in addition to the ones referred to in the Commission's citation of hearing and that same prescribed rating of 75 per cent of M in connection with carload minimum weight of 30,000 pounds. This Order was very objectionable to all of the Florida lines; however, it was made effective by some of the lines, same being published under protest.

One of the important Florida lines carried its protest to the extent of declining to make this order effective and in letter addressed to the Chairman of the Railroad Commission of Florida, under date of September 3rd, 1910, set out fully its reasons for so declining and with respect particularly to the reduced rating on fertilizer materials, among other things, called the Commission's attention to the fact [fol. 454] that its Order No. 306 undertook to make a 25 per cent lower rate on fertilizer ingredients, worth at that time $50.00 and $60.00 per net ton, that it makes on mixed fertilizers worth $25.00 per ton, and by its Order, the Commission undertook to say that where $2.00 is a just and reasonable rate on 30,000 pounds of mixed fertilizers worth

$25.00 a ton a just and reasonable rate on the same weight of nitrate of soda worth $50.00 a ton is only $1.50 per ton. The rate on materials is not an any-quantity rate; that is a carload rate, 30,000 pounds. The rate on fertilizer was an any-quantity rate, with some few exceptions, as my first exhibit shows, where they specified a carload minimum. I do not think there is any justification for a difference between the two, because as a matter of fact, even under the any-quantity basis, the complete fertilizers move in carload quantities. Assuming that the same rate would be reasonable on fertilizer materials as on a complete fertilizer, then if we are going to have an any-quantity rating on one and a carload rating on the other, I think the any-quantity rate would be higher than the carload rate. Of course, the any-quantity rate is the carload or less than carload rate, it includes both carloads and less than carloads, but I can't see any justification in making a substantially lower basis of rates on fertilizer materials than on fertilizer.

"By Mr. Burr:

"Q. Mr. Ketner, it appears not fair to create the impression here that the price of mixed fertilizer at the date you have mentioned here was $25.00 a ton in Florida.

"A. That was the figure we had at that time, Mr. Burr, as I stated."

I understood it to be the price of fertilizer in Florida; it was my understanding that that was the price of the complete goods in Florida at that time, that *it* simply taken from our records, I have no first hand information on that. [fol. 455] I am referring now to the protest that was filed with the Florida Railroad Commission at that time as to the matters and things that were stated in that protest; we had objected to putting in the order, and we were simply giving our reasons for not making the order effective, we felt that the Florida Railroad Commission was entitled to our reasons. Attention is also called to the fact that the whole purpose of the Commission's Order, as was clearly indicated at the hearing of August 11th, was to build up and foster interior fertilizer factories at the expense of the carriers and to the detriment and disadvantage of the port

fertilizer manufacturers, and through its rate making power, was preferring one section of the state to the prejudice and disadvantage of interests in another section of the state, and its effect was to destroy natural advantages enjoyed by the manufacturers at the ports through an arbitrary adjustment in rates. It also had the effect of giving preferential treatment to certain fertilizer materials which were applied directly to the soil as in commercial fertilizer. Among such articles are nitrate of soda, cottonseed meal, acid phosphate, wood ashes, cottonseed hull ashes, kainit, land plaster, etc. (Tes. 584-587.)

This carrier offered the further reason that the Commission's Order 306 included a great many articles that were not included in the notice of hearing, which was contrary to the law governing the Railroad Commission.

I don't know it as a fact that in that hearing, although the carriers were opposing making rates on these materials, that it was agreed on one point, that such materials as the State Chemist of Florida set down as fertilizer materials would be named in whatever order was written. As I mentioned, the compromise suggested at that hearing was to adopt a basis of 75 per cent of Class M on the list of articles that took 90 per cent of the fertilizer rate in the state of [fol. 456] North Carolina. I know that to be a fact, but I don't know it to be a fact, the statement you have just made; I am relying upon the statement of our first Vice-president, and he was at the hearing, he attended the hearing. It may possibly be hearsay. Information given us by our first Vice-president, we consider almost first-hand information.

In addition to what has been said, this carrier objected to the measure or the proposed basis of rates as it would result in lower rates than carried on similar commodities in any other state reached by this carrier and that no other state through which it operated, with the single exception of North Carolina, had attempted to make lower rates on fertilizer materials than applied to fertilizer, and that in that state, the list of commodities taking rate less than fertilizer was very limited.

This carrier continued to refuse to observe the Railroad Commission's Order 306, and after a lapse of something

over two years, the Florida Commission issued notice on September 7th, 1912, calling hearing at Tallahassee, Fla., September 18th, 1912, for the purpose of considering and investigating whether an order should not be entered requiring this carrier to adopt Order No. 306. The notice of this hearing contained an exact list of the commodities included in Order 306, thus meeting one of the objections raised by this carrier against the previous order. At this hearing, which was finally held on October 2nd, 1912, the defendant carrier again made strenuous objections to the proposed action of the Commission; however, under date of October 8th, 1912, the Florida Commission issued its Order No. 374, effective November 15th, 1912, which is filed as Carriers' Exhibit No. 211.

Following receipt of Order No. 374, the defendant carrier filed an application for an injunction against the enforcement of the Commission's Order, this application being filed in the Circuit Court of the Second Judicial Circuit in Leon County, Fla.; however, before this injunction proceeding [fol. 457] was disposed of the defendant carrier, to relieve itself of the possibility of suffering heavily penalties on account of its previous refusal to comply with the Commission's Order, published the reduced rating, effective August 6th, 1913. (Tes. 587-590.)

We did not get a permanent injunction against the Order; we simply minded to save ourselves from being spanked. I don't know that the Court would spank us, but we had other matters up in Florida. We were in court on a good many very important matters. They were all withdrawn from the courts; it was Judge Watts, I think you will remember that Judge Watts was responsible for that compromise; there were other matters that were pressing us. It was good business judgment to accept. The same criticism, made in 1912 of the 75 per cent of Class M rating on fertilizer material, applies with equal force today, and in our opinion is indefensible.

The only states, as far as I am advised, making a lower rating on fertilizer material than on fertilizer, other than the State of Florida, as previously referred to by Mr. Menzies, is the State of Georgia, where only two articles, namely, Kainit and Acid Phosphate in bulk, carload mini-

mum 40,000 pounds, is rated 10 per cent less than fertilizer and in the state of North Carolina a restricted list of fertilizer materials are given rating of 90 per cent of the fertilizer rate when such materials are loaded to 50,000 pounds or more to the car. In North Carolina the larger percentage of fertilizer materials move from the port of Wilmington, reaching that port by water, and on the inland movement to North Carolina destinations we have for some time past considered this movement interstate in character and therefore have not applied the North Carolina intrastate rating but have applied the interstate rate, which is the same as on fertilizer, however.

[fol. 458] I don't think we are applying the intrastate rates on imported materials today to Florida points; I don't know that we have taken definite action on that, we are applying it on petroleum products, and it should likewise be applied on imported fertilizer materials. If our officials in Florida are construing their movement of fertilizer materials from the ports as interstate traffic, and applying the interstate rates, they are carrying out my idea on it.

That is in line with my idea, and we are trying to sustain that idea in the Federal Courts now. Continuing my statement as to the situation in North Carolina, under an order of the North Carolina Corporation Commission issued in April, 1924, directing the carriers to apply the intrastate rates on such movements where there was a change of ownership at the port, the carriers, to avoid penalties, have applied the intrastate rating for cars loaded to 50,000 pounds or more, but have carried the matter to the Federal Court, Eastern District of North Carolina, on an application for interlocutory injunction against the North Carolina Corporation Commission's Order, and that matter is now pending. We had to observe the North Carolina Commission's order, or rather the North Carolina Commission's idea as to the difference between interstate and intrastate traffic, because their idea was backed up by an order and carried with it serious penalties, whereas the Interstate Commerce Commission, taking the opposite view to that of North Carolina Corporation Commission, had not put its ideas in the shape of an order, and therefore we had only one alternative, and that was to obey the

order of the North Carolina Corporation Commission, and we are exhausting all our reasonable remedies to get the matter straightened out and some final conclusion reached. (Tes. 590-593.)

[fol. 459] There are only one or two interior fertilizer plants on the Seaboard Air Line Railway in the State of Florida, namely, Gainesville and Orlando. Those interior plants of course reach the plants at Jacksonville and Tampa, and there are possibly other minor mixing plants. There is a little mixing done at Tallahassee; there is more or less mixing now on every farm practically. I am not enough of a fertilizer expert to say whether those home fixing formulas are valuable or not. I am speaking of the Seaboard, I specified the Seaboard. Both of the plants I have referred to are of comparatively small capacity, however, for the first five months of 1924—January to May, 1924, inclusive—the Seaboard moved out of Jacksonville 409 cars, or 9,274 net tons of fertilizer material, and 384 tons from Tampa, which apparently sustains the carriers' criticism of September, 1912 that, with the preferential rating on fertilizer material, there would likely occur a movement of certain of these materials for direct application to the soil, to the prejudice of comp ete fertilizers paying the full fertilizer rate from the port factories to interior consumers, as it is hardly probable that those two minor interior plants use the amount of fertilizer material that I have specified.

As previously stated by Witness Menzies, fertilizer in Florida is now rated Class M, any quantity, with some few exceptions. Regardless of the fact that fertilizer takes the same rate carload or less than carload, the analysis of the movement over the Seaboard in Florida, so far as we have been able to make same, indicates that the majority of the movement is in carload quantities, that is in lots of 15 tons or more, from one shipper to one consignee on one bill of lading; for example, the movement via the Seaboard from Jacksonville, Fla., for the first five months of 1924; we moved 1,309 cars, or 24,133 tons, loaded 15 tons or more to the car, whereas, during the same period we only handled [fol. 460] L. C. L. shipments amounting to 5,764 net tons. The L. C. L. movement represents 19.2 per cent of the total movement during the 5 months period. The less than car

load shipments were handled in the usual way, through our forwarding depots, received from drays or trap cars, and delivered through our depots at destination, placing on the carriers all of the additional expenses of loading and unloading incident to less than carload traffic which is considerably more expensive than carload traffic where same is loaded and unloaded by the shipper or receiver, whereas the compensation to the carrier was on no higher basis than on the carload movement. The any-quantity rating on fertilizer is an inheritance of the old days when fertilizer was consumed in comparatively small quantities, but is unfair to the carriers under present conditions.

As previously stated by Witness Menzies, we are proposing the application of the so-called Third Royster Scale for intrastate application in the State of Florida on both fertilizer and fertilizer material. (Tes. 593-595.)

In view of the geographical location of Florida in that it is a peninsula state and that the lines operating in the state are, as expressed by the Interstate Commerce Commission, gathering or terminal lines, having no opportunity to participate in transtate traffic but wholly dependent upon traffic originating in and or terminating in that state, a higher level of rates on fertilizer might properly be proposed for application in the state of Florida than in the other Southern States.

"By Mr. Burr:

"Q. It seems that this peninsula state is rather attractive to the railroad owners, to build more lines in it at present, Mr. Ketner?

"A. It is an excellent state, Mr. Burr, and we consider it a coming state.

"Q. Therefore, the conditions which you refer to are not considered at all serious when it come to making an [fol. 461] investment in railroad property in Florida."

Florida is an excellent feeder for the rest of the lines, there is no question about that, I haven't denied that, and I am not offering that as a justification for a higher level of rates, but nevertheless, Florida is a terminal state, the lines in Florida are terminal lines, and they are therefore in the position of stub lines, those lines leading out from

Jacksonville south, where the authorities have repeatedly recognized that those stub lines, not in a position to participate in through traffic might properly be accorded rates somewhat higher than the general level of rates on the Trunk Lines or the Trunk stem of the system. I here refer to Carriers' Exhibit No. 212. The statement filed shows present and proposed local mileage single line rates on fertilizer and fertilizer material between points in Florida as compared with the proposed Royster Scale. As to carload shipments of fertilizer, it will be noted that the scale proposed by the carriers will result in material reductions in the present scale to and including 140 miles, with the exception of 94 to 100 miles, and 111 to 120 miles, and the block 141 to 150 miles inclusive, where there would be no change. Beyond 150 miles, the proposed scale will result in advances.

On fertilizer material, now rated 75 per cent of the fertilizer rate, there would be advances in the proposed scale with the exception of the first two mileage blocks. In this connection, it might be well to call attention to the fact that in the several comparisons filed by previous witnesses, where the Royster Scale did not result in reductions, it was in almost all cases for the longer distances; generally speaking; distances beyond 150 miles. As has also been shown by other witnesses, the average movement of complete fertilizer is for distances substantially less than for 150 miles, whereas, fertilizer materials move for the longer distances. That is true in Florida; I think that will be [fol. 462] borne out by the traffic or revenue test. In considering the reasonableness of the Royster Scale for the longer distances, we ask that the Commission bear in mind the fact that the fertilizer materials, on the average, are of substantially greater value than complete fertilizers, and therefore, proportionally higher rates on same would not be unreasonable.

The Class M mileage scale applicable in Florida, exclusive of the advances under General Order No. 28 and Ex Parte 74, and 10 per cent reduction under Docket 13294 of July 1st, 1922, has been in effect for a number of years, with the exception of a reduction effective July 1st, 1903 of 10 cents per ton for distances up to 70 miles and 5 cents per ton for distances 71 miles to and including 100 miles.

Now, as to the joint haul rates. The present basis for joint haul rates under the Florida Commission's Freight Rule No. 19 is combination of locals less 10 per cent, where the joint haul is over two independent lines and combination of locals less 20 per cent where the haul is over three or more independent lines. (Tes. 595-598.)

[fol. 463] Direct examination (continued):

Just before noon adjournment I had referred to Carriers' Exhibit 213, which is statement showing combination of local mileage rates for varying distances on fertilizer rated Class M in carload quantities, and fertilizer material rated 75 per cent of Class M in carload quantities, as compared with the proposed joint haul scale. In this statement the joint hauls are calculated only on basis of two-line hauls or combination of locals, less 10 per cent., indicated in lines A and B; line C represents the proposed joint haul scale. To illustrate, assume a joint haul of 50 miles made up of 25 miles over two lines, the present fertilizer rate is 304 cents; fertilizer material rate 228 cents, and under the proposed scale 214 cents, representing a reduction of 90 cents per ton on fertilizer and 14 cents per ton on fertilizer material. Assume a haul of 50 miles on one line and a haul of 25 miles on a connecting line, or through joint haul of 75 miles, the present fertilizer rate is 335 cents and the fertilizer material rate is 251 cents, the proposed rate is 248 cents, representing a reduction of 87 cents per ton on fertilizer and 3 cents per ton on fertilizer material. Assume haul of 75 miles on one line and 25 miles on a connecting line, or joint haul of 100 miles, present fertilizer rate would be 365 cents and the material rate 274 cents, whereas under the proposed joint scale both would become 282 cents, representing reduction 83 cents on fertilizer and advance of 8 cents on fertilizer material. Reductions on fertilizer would be the general rule and on fertilizer material there would be both reductions and advances, the advances being largely due to the unreasonably low basis for present rates on fertilizer material.

As indicating the effect of the proposed rates from representative fertilizer manufacturing points in Florida to [fol. 464] representative intrastate destinations in Flor-

ida, I will here refer to Carriers' Exhibit No. 214. In this exhibit we take Tampa, Florida, and Gainesville, Florida, as representative points of origin, and stations on the Atlantic Coast Line and Seaboard Air Line Railways as representative destinations. The rails of the Atlantic Coast Line and Seaboard Air Line Railway reach both points of origin, therefore the distances are figured by the continuous hauls of the respective lines, except at common point destinations we have used the short line distance via either the Seaboard or Atlantic Coast Line. It will be noted the proposed rates will result in both increases and reductions, but where advances occur they will not be material except for extremely long hauls, and for such hauls it is hardly probable there will be a movement for reason that those destinations would more than likely be served by manufacturing plants nearer the destinations. For example, on page 2 of this exhibit we have shown destinations on the Seaboard between Jacksonville and Chattahoochee River, that is the line running out due west from Jacksonville, and present and proposed rates from Tampa, Florida. It is hardly probable Tampa would expect to supply fertilizer to this part of the Seaboard as against the extensive production of fertilizer at Jacksonville, Florida, having an advantage in distance of approximately 180 miles. (Tes. 599-601.)

Now, as to the next adjustment, as witness Menzies has stated, the carriers propose the application of the so-called Royster scale for single line or joint haul application between points in Florida and points in adjacent States. For example, from points in Georgia, such as Albany, Blackshear, Valdosta, and from South Atlantic Ports, namely, Brunswick, Savannah and Charleston to destinations in Florida. The general basis for interstate rates on classes [fol. 465] and commodities to and from Florida is combination on Jacksonville. Now, when I speak of combination I do not mean necessarily full combination of locals between Jacksonville; either combination of locals or differential basis made up of proportional rates to and from Jacksonville. This basis has consistently been adhered to, and it has been established and repeatedly approved by the Interstate Commerce Commission in various adjustments and in our opinion there is full justification for the continuance of same. The peninsula of Florida is peculiar to any other

State in the United States, in that the trunk lines in Florida do not and cannot participate to any extent in the movement of trans-State traffic, i. e., traffic originating at or destined to points in other States passing through the State of Florida. We are not proposing combination on Jacksonville proper; but I just wanted the record to show very clearly that we are departing from the usual basis, and this is a radical departure, and we still feel that there might be justification in putting these rates on the usual basis of combination, or differential basis, except for reasons I will later explain. I want to show that we are making an unusual and unprecedented concession to the State of Florida and to the fertilizer interests. Not only that is made with respect to fertilizer and fertilizer materials, and is based particularly upon the circumstances and conditions that surround the handling of that particular commodity.

The outbound movement in any volume is almost entirely limited to perishables, lumber, naval stores and phosphate rock. There is but little manufacturing in the State, and the inbound tonnage is limited largely to food and clothing for the inhabitants, together with fertilizer, machinery, etc.

The Florida situation, with its thin population per mile of road, results in the condition of low traffic density less [fol. 466] than in any other State east of the Mississippi and South of the Ohio and Potomac Rivers. (Tes. 601-603.)

In support of my statement as to the low traffic density in the State of Florida as compared with Southern Territory generally, I will refer to Carriers' Exhibit No. 215, statement showing average miles operated, revenue ton miles and revenue ton miles per mile of road on Class 1 roads in Southern Region for years 1922 and 1923, as compared with the traffic density on that portion of the Class 1 roads in the State of Florida. It will be found that the average traffic density on the Florida lines is, in round figures, 39 per cent. of the traffic density of Class 1 lines in Southern Region. The exhibit indicates the source of this information, and speaks for itself. That exhibit covers the two years, 1922 and 1923. 1924 is not available. That is, of all Class 1 lines. That information is usually gotten up by the Bureau of Railway Economics. As an individual line, I know of course the figures are obtainable.

I am sure we have the individual figures, but I mean for the Class 1 lines of the Class 1 roads in Southern Territory as a whole. I have not any figures on that. As to those exhibits, I want to be entirely fair. Since this exhibit was prepared we have found that in the general averages of the Class 1 lines in Southern Region, we have included the revenue ton miles of the entire line of the Illinois Central Railroad, whereas, as a matter of fact, taking 1923 to illustrate, it shows the average miles operated 4,840.25, whereas, that part of the Illinois Central in Southern Region is only 1,676 miles.

I don't think there is any way of determining what their traffic density is in Southern Territory alone on that line. The only thing we can do is to take the revenue ton miles per mile of road, and multiply that by 1,676, to arrive at the [fol. 467] revenue ton miles, and take that portion of that total figure included into this general average. On that basis it would reduce the average revenue per ton mile of road from 1,411,665 to 1,270,000. And the ratio of the average ton mile per mile of road in Florida to that total figure would represent 44 or 45 per cent. instead of 39 per cent. I have previously indicated. That is, the revenue ton mile per mile of road in Florida would represent about 44 or 45 per cent. of the general average in Southern Region.

I think it is an acceptable basis, that where the higher the traffic density the lower the rates can properly be relatively, and it is about the only thing that represents the density of traffic.

"Q. Now, just to test that idea, and to show the possible exceptions to it, I notice here that the Atlantic Coast Line System for 1923 has a traffic density of 763,668, whereas, the Carolina, Clinchfield & Ohio has a traffic density of 3,465,021. Now, what would you say that that would indicate, that rates ought to be substantially lower relatively on the Carolina, Clinchfield & Ohio than on the Atlantic Coast Line?

"A. That is not, of course, a conclusive figure. I think you have got to take into consideration somewhat the traffic moving. Of course, that density on the Carolina, Clinchfield & Ohio represents a large percentage of coal traffic."

That is true of some of these other lines.

As previously stated, the Interstate Commerce Commission has established and repeatedly approved the combination basis of interstate rates in and out of Florida. For example, in the several fruit and vegetable adjustments out of Florida, also in the live stock adjustment, I. & S. Docket 1563, 74 I. C. C. 419, in the naval stores adjustment, I. & S. Docket 1900, 87 I. C. C. 740, and in the fertilizer [fol. 468] adjustment from Blackshear, Georgia, Docket 13514, 87 I. C. C. 654, and in the brick and clay products adjustment, I. & S. Docket 1885, 88 I. C. C. 543. For ready reference, I will call attention to Carriers' Exhibits Nos. 216 and 217, extracts from the several decisions of the Interstate Commerce Commission bearing on this question. One of the Commissioners has also apparently recognized this basis in a tentative report in I. C. C. Docket 13494, on the class rate adjustment. (Tes. 603-606.)

We desire it clearly understood the combination basis heretofore applied is, in our opinion, entirely proper and reasonable, but for reasons I will later give you, we feel that fertilizer in this instance requires some special treatment, and in departing from the general basis, makes a substantial contribution to the fertilizer interests, either the manufacturer or consumer, whoever gets the benefit of rate reductions.

We were not quite satisfied with the extent to which that basis was recognized in the tentative report in 13494; it only recognized it in principle, and not in revenue.

The only justification for departing from the general basis in the case of fertilizer moving into Florida from adjacent States is that, as we understand it, the purpose of this investigation is to arrive at a uniform level of rates that can be reasonably applied both interstate and intrastate. Fertilizer is the only commodity manufactured to any extent in Florida, and consumed within the borders of that State. As a matter of fact, by far the larger portion of fertilizer used in Florida is manufactured in the borders of the State. There is a movement from these adjacent States into Florida, but it is comparatively an insignificant movement. I said fertilizer consumed in Florida is largely manufactured in that State. We are proposing for interstate application within the State of Florida the single line

[fol. 469] and joint haul so-called Royster scale. The important fertilizer manufacturing points in Florida, that is, important more or less, are Tampa, Lakeland, Orlando, Gainesville and Jacksonville. There are of course other minor mixing plants.

Pensacola is an important point from a manufacturing standpoint, but I don't think they ship much in the direction of Jacksonville.

There are likewise fertilizer factories at Albany, Valdosta, Blackshear, Savannah, Georgia, Charleston, South Carolina, and Brunswick, Georgia, and possibly other points in the same general territory, shipping in more or less volume to consumers in the State of Florida. The Florida manufacturer having the benefit of the single line or joint haul continuous mileage scale under the carriers' proposed adjustment, the interstate shipper at the points mentioned would be at a disadvantage on a combination or differential basis over Jacksonville, and therefore, the only way that the several manufacturing points can be kept on a parity, distance considered, is by applying the distance scale from the adjacent interstate points into Florida—and this basis will remove any ground for a discrimination complaint and appears to us a reasonable basis considering the comparatively short hauls between the interstate points of origin and the Florida State line.

The basis we are proposing from interstate points of origin in adjacent States and South Atlantic Ports into Florida will result in material reductions. In support of this statement I will call attention to Carriers' Exhibit No. 218, showing the present and proposed rates on fertilizer from Albany and Blackshear, Georgia, as representative points of production, to destinations on the Seaboard Air Line Railway and Atlantic Coast Line Railroad in Florida. [fol. 470] The distances in this statement are figured by short line workable routes, as indicated. This exhibit speaks for itself, and shows that we are proposing a basis of rates that will actually make many reductions in the already extremely low rates recently established by the Interstate Commerce Commission in the Blackshear Case, Docket 13514, 87 I. C. C. 654. (Tes. 606-609.)

As illustrating the effect of the proposed basis of rates from Jacksonville, Brunswick, Savannah and Charleston, to Florida destinations, I here direct attention to Exhibit No. 219, which shows representative points of destination on the A. C. L. Railroad and S. A. L. Railway in Florida, the distances reflecting the short line workable routes as indicated in the exhibit. It is intended to apply the mileage scale for the actual distances from the several ports, and this basis will result in both advances and reductions; more substantial reductions being in the rates from Jacksonville.

Now, at the present time the adjustment from South Atlantic Ports into Florida is on a differential basis. That is, the rates from Jacksonville are on the actual mileage, Savannah, exclusive of the two 25 per cent advances and the 10 per cent. reduction—Savannah was made $1.00 per ton over Jacksonville; Brunswick was made the same as from Savannah; Charleston was made 50 cents over Savannah, or $1.50 over Jacksonville.

It is a fact as appears from this exhibit that under the Carriers' proposal there will be reductions in a great many of the rates that were established by the Commission in the so-called Blackshear case. That we consider those rates extremely low, and yet what we are proposing here will actually result in reductions in a good many of those rates. The carriers were not at all satisfied with the decision in the Blackshear case; they filed a petition for rehearing in that case, and that is now pending before the [fol. 471] Commission.

I think that these rates that we are proposing are lower than maximum reasonable rates on fertilizer. My idea that the fertilizer development in the South has grown up from the time when we handled fertilizer for practically nothing, and as Mr. Burr said, when we made a charge for it, a large part of it was rebated, that is the basis for our present adjustment today, and I candidly think that we might have reasonably proposed a substantially higher level of rates than we are proposing here.

As to the reasonableness of the rates per se, I do not think the Commission would be justified in requiring us to go as low as we are proposing voluntarily to go; I don't

mean to say these rates will be confiscatory, I think they will pay us something about the out-of-pocket cost.

As to what is our reason for going lower than we think would be reasonable: From these interstate points of origin into Florida, as I explained, our reason for doing it there is to put the interstate shippers shipping into Florida on a parity with the intrastate shipper selling from the same point of destination.

I think one reason is that the rates we are proposing bear the stamp of reasonableness of the Interstate Commerce Commission; I think that is one of the controlling reasons. I am speaking of the question as a whole. I understand the question involved is the whole question, and not any particular situation. I think that is one reason that influenced us in using the Royster scale.

"By Com. Eastman:

"Q. You think, in view of the Third Royster Case, you could hardly expect anything higher than that?

"A. I say, it bore the stamp of approval by the Commission.

"Q. But you are not doing it because you think any con- [fol. 472] cession ought to be made to either the fertilizer producing industry or the fertilizer consuming industry?

"A. I don't think so, sir; I think a somewhat higher scale would be reasonable to charge for the services involved, to all interests concerned. Now, that is my personal view. I do not know that others agree with me on that."

I really think that fertilizer is one of the commodities that might be reasonably advanced. You evidently have in mind the Hoch-Smith Resolution. I think fertilizer is one of the commodities that might be reasonably advanced and nobody injured. (Tes. 609-612.)

Well, it is mighty hard to tell what the resolution means, but all I can get out of it is in trying to reach some general level, and some rates may be too low and others too high.

It is my view that if in the course of the investigation the Commission should undertake a redistribution, to use the language of the resolution, of rates in Southern Ter-

ritory, and an adjustment with the idea of establishing a better relativity as between different commodities, that fertilizer is certainly not one of the commodities that should be reduced, but on the contrary, if anything be advanced, I have no commodity in mind now which I think ought to be reduced.

Now, as to the value of commercial fertilizer used in Florida, in further justification of the reasonableness of the proposed Royster scale into Florida, it is well recognized that value of the commodity is one of the elements to be taken into consideration in fixing a reasonable rate, and incidentally, the fertilizer generally used in the Florida soils represents the highest priced formulae used in Southern States, as stated by Mr. Brantley, of the Blackshear Manufacturing Company, Blackshear, Georgia, testified in that case that the values of the formulæ used in Florida [fol. 473] were about double those used in Georgia (T. R. pages 65 and 70); in the same case Witness Nickerson, Citrus grower, Tampa, Florida, stated that the cost of fertilizer used in the citrus groves ranges from $36.00 to $47.00 per net ton, as compared with the average value of commercial fertilizer of $28.00 per ton (T. R., pp. 162, 163). When in Tampa, Florida, on the 13th instant, I had occasion to look over a number of paid vouchers covering fertilizer purchased this season, and the fertilizer for citrus culture was on basis of $36.00 per net ton, and for vegetable formulae $47.00 per ton, cash basis. Those were wagon priced. That was fertilizer hauled from the factory at Tampa. It was the f. o. b. price, factory. (Tes. 612-614.)

[fol. 474] Cross-examination:

I referred with approval to that feature of the decision of the Interstate Commerce Commission in the Blackshear case announcing higher rates in Florida than just north of Florida. In the Blackshear case the differential, joint line over single line, is 20 cents per ton. The differential we are now proposing varies; it will run around 34 cents. I think the Commission erred in the Blackshear case in adopting any such scale for that territory, and I think the differential between the single line and the joint line haul was lower than it should be. I referred to the peculiar situation in Florida that it is a terminal state, and the

trunk lines going down into Florida are stub lines. I think it reasonable to say I used that situation to uphold my argument that the rates into and out of Florida should be on a higher level than elsewhere. I am not able to state why that principle has not been carried into passenger rates and express rates, by the carriers. I know nothing about passenger or express rates; I would have to know the basis for those rates. I am not sufficiently familiar with the basis of the rates.

I referred to the relatively small number of fertilizer plants in the interior on our line as compared with the port plants. There is no question but what the port plants not only on fertilizer, but any other manufacturing industry that gets a large part of its material—its raw material by water, has an advantage—to which it is entitled over an interior manufacturing point.

"Q. Now, Mr. Ketner, speaking of Florida's peculiar situation. Can you cite me to any scope of country in Florida that is as little productive—that is, as barren of population—and where your line of railroad is as expensive to maintain as that stretch of country from Jacksonville to Savannah, Georgia?

"A. I don't know of any poor section right now. But we have got to go through that section to reach Florida. It is just one of those difficulties that any pioneer line has [fol. 475] to undergo, is to go through a barren territory to get to some territory they think might be productive."

That line is not still barren. We are spending considerable money in fostering a drainage project in that particular section. That section has also yielded us substantial revenue in lumber traffic. That has not gone; we still have some. Not many years ago the center of production of lumber on that line was right in that section. Of course a great deal of lumber has been taken out of there, but there is still a substantial movement of lumber out of that territory. (Tes. 615-618.)

As to what we are doing to avoid 4th section violations in applying the joint scale versus single scale: The 4th section problem is one that will be covered, as I understand, in later proceedings, and we will have to give that

consideration at that time. We will no doubt run into many 4th section difficulties in that adjustment, but I have not undertaken to testify on that. The majority of these fertilizer manufacturing points in Florida are reached directly by the respective trunk lines, and we won't have many joint hauls. Until we have some more figures as to the actual movement, I could not tell you as to what extent there is joint-haul movement, or what relation the joint haul is to the single line haul. That will very likely come out in the traffic test. Offhand, I think the joint haul is substantially less than the single line. My exhibit 215 covers the revenue per ton per mile of road on intrastate as well as interstate traffic.

The operation of the mileage scale which the carriers have here submitted would cause advances in charges in the State of North Carolina on materials now moving on basis of 90% of the fertilizer rate, loaded in 50,000 or excess car; that would represent 10% increase. Instead of taking 10% off of those figures, I would not be willing to say offhand that under the level which I have submitted, charges in South Carolina, intrastate, would be advanced; I have not examined the exhibits to see that. There would probably be a general increase in the State of South Caro- [fol. 476] lina on fertilizer. I think that would be true also of the State of Georgia; the Georgia rates are very low. I will accept your statement that it would be true as the whole of the State of Alabama. I was dealing with intrastate. I think it is a natural assumption that it is true as to all of the State of Mississippi. I don't know if it would be true of all of Louisiana east of the Mississippi River. I would not say that there would result advances in interstate rates, one State to another, in many instances. Because, I think some of the previous witnesses testified a large part of our interstate adjustment, in fact, that part of the adjustment moving the preponderance of the fertilizer tonnage is now on the Royster scale, the scale the carriers are proposing in this proceeding. (Tes. 618-621.)

"Q. Mr. Ketner, in your connection with this matter, has it gone only with your effort to prepare certain testimony for use in this case as affecting Florida, or have you

had any part in the determination of the policy which has been engendered in the determination to propose the Royster scale?

"A. I have had very little to do with the several conferences and detailed handling of this adjustment. I have had something to do with the policy question, as to whether we would use the Royster scale as a fair basis, and I have just gotten into the case in detail in the last week."

I am not familiar enough with the operation of the suggested rate level in the States of South Carolina, Georgia, Alabama and Mississippi to agree that there would be general advances in all of those States. That result was taken into account by us, however. We considered what we were proposing would bring about, an not unreasonably high general level. I have not admitted that there would be general advances in the States named; I did not have any figures before me. I knew of course in any general levelling process, there must necessarily be increases and advances. I did not know definitely, but it was the natural assumption that there would be—except North Carolina, on fertilizer.

[fol. 477] "Q. Then, finally, I will put the question this way. So far as you were concerned with the policy of it, you did not attempt to estimate the extent to which the figures that you sought approval of, would generally advance the transportation costs on fertilizer in the South?

"A. That could only be determined, Mr. Cotterill, by revenue tests, I think."

I did not think what we were proposing would do violence to the fertilizer traffic as a whole. It would be a great surprise to me if it yielded under my figures an increased revenue of about $1,000,000 per year. Concerning South Carolina: The rates prior to the reduction for 1924 by the State Commission were much higher than the Royster scale, and the South Carolina Commission at first agreed to apply the Royster scale. They actually issued a circular on it, and I issued a tariff employing the Royster scale for South Carolina application; the farmers complained of increased carload minimum from 20,000 to 30,000 pounds, and the State Commission withdrew their circular. I canceled my

tariff, which had not gone into effect. They very readily accepted the Royster scale as being reasonable then. In Alabama, the State Commission has made violent reductions within the past year, and every effort was made to bring about violent reductions in the State of North Carolina. I think that it is true when you go to considering any question of revenue you should take the situation existing prior to this campaign carried on in the various States.

My recollection of our instructions is that the traffic test will be predicated both upon the rates we are asking and those now in effect in South Carolina and Alabama, and the rates in force prior to this reduction.

As to whether that circular mention was issued by the South Carolina Commission without any formal hearing or complaint: It is hard to determine if proceedings before that Commission are formal or informal. My recollection is there had been a so-called formal hearing. I may be in error there. (Tes. 623-627.)

(Witness excused.)

[fol. 478] F. W. KIRTLAND was thereupon called as a witness and—been first duly sworn, testified as follows:

Direct examination:

I am the freight traffic manager of the Florida East Coast Railway Company. I desire to make a very brief statement as to the position of the Florida East Coast Railway Company in this case.

I understand the Florida rates are not directly in issue in this case, and that the decision of the Commission in this case will not go to the measure of the Florida rates. Under the laws of Florida the State Commission cannot increase or reduce the rates until after a public hearing. It has been universally agreed that the rates in Florida, on account of the conditions existing in that State, should be on a somewhat higher basis than the rates in the States farther north. For that reason it has seemed to us that it would not be appropriate at this time to offer any suggestion as to what the rates in Florida ought to be. It is our feeling that before making any suggestion as to the Florida

rates we should first know, what the rates interstate and intrastate will be in the States farther north. That is our position, so far as suggesting at this time any intrastate rates.

Now, in reference to the proposal of the so-called standard lines in making the rates on fertilizer into Florida interstate on a mileage basis, we would like to express our views, so far as that business would affect the Florida East Coast Railway Company. We have no fertilizer plants located on the Florida East Coast Railway. All of the fertilizer that we receive is delivered to us on an interchange track at Jacksonville. We don't serve Jacksonville. Our road begins at the end of the St. Johns River. We get into Jacksonville on the Terminal Railway Company.

"By Mr. Burr:

[fol. 479] "Q. Mr. Kirtland, the Painter Fertilizer Company is in South Jacksonville, is it not?

"A. Practically extinct, Mr. Burr. They do practically no business now, and I did not think that their operations were of sufficient amount to be of any moment in this case."

The Florida East Coast Railway goes to the north bank of the St. Johns River, but not into the City of Jacksonville. We have a terminal in the City of Jacksonville; we operate over the Jacksonville Terminal Company; part owner on an operating basis. That is, passenger terminal.

We have a freight terminal, the East Coast Terminal Company, but in order not to mix this railroad up, I am speaking primarily now to fertilizer, and that comes to us over the other lines on the joint interchange.

Our records show that 90 per cent.—approximately 90 per cent. of the fertilizer we have originates on the rails of other lines at Jacksonville. Transported by those lines an average of from 3 to 10 miles. Now, it is our feeling that a reasonable rate should be established for the handling of fertilizer delivered to us at Jacksonville. The bulk of the business originates on other lines in Jacksonville; pays the transportation charge for delivery to our line. After having fixed a reasonable rate for the transportation of that 90 per cent of the business, we do not feel

that we should be called upon to absorb out of our earnings the expense of a fertilizer plant located somewhat farther north. (Tes. 628-631.)

We get our mileage rates from Palm Beach on all of the business the Seaboard gives us.

We have not been able to bring ourselves to a point where we can see why we should be called upon to shrink our earnings, in order to take the place of a disadvantageous location on some other line. Now, in the proposal of the so-called standard lines to establish through rates interstate to points [fol. 480] on the East Coast, it is merely an effort on their part to go along with the first phrase of "a dead-level of freight rates" without regard to those fundamentals that have heretofore been regarded as of prime importance in making freight rates. It has generally been understood that the rates in the South should be on a somewhat different level from the rates in the East, and the rates in the West should be on a somewhat different level from the rates in the East and South, but the fact is that the conditions on the Florida East Coast are so radically different from the operating conditions on any of the other Southeastern carriers, we cannot understand why there should be a dead level of rates. And so far as that is concerned, our conditions are radically different from what they are on any other Florida line. So that being true, it has seemed to us that the rates prescribed for the use of the Florida East Coast Railway Company should be based on the conditions of the Florida East Coast Railway Company, and not in conformity with some preconceived idea of a dead level or uniformity of rates based on conditions in some other section of the country, and under operating conditions that do not apply at all to the Florida East Coast. The rates on the Florida East Coast on fertilizer and the other lines are the same.

Those intrastate rates were prescribed for our use by the Florida Railroad Commission. We get the same rates, whether intra- or interstate.

The rates were prescribed for our use by the Florida Commission, and we have always applied those same rates both interstate and intrastate, with some certain exceptions, but fertilizer was not one of the exceptions. That was voluntary on our part. So, so far as interstate traffic

is concerned, I have not sought to distinguish the situation on the Florida East Coast from that of other roads, because the rates were the same, and we did not seek to distinguish it now, we want to have the same rates on interstate as on [fol. 481] intrastate now.

"Q. Do you want to have different rates from other roads?

"A. You mean, do I want our rates to be different from the so-called standard lines?

"Q. Yes.

"A. I do not care what rates they accept. I am only speaking now for the Florida East Coast." (Tes. 631-634.)

As I have said, I do not feel in position yet to recommend any rates, for the reason that it has been universally agreed heretofore that the rates in Florida should be on a somewhat higher basis than in States farther north, and we don't know yet what rates are going to be prescribed for the States farther north. After that has been determined, the Florida Commission will then call a hearing, and everybody will be given an opportunity to express themselves at that time, and we will suggest to them what we consider a reasonable basis of rates in view of the rates prescribed for the use of the lines north of Florida. No matter what was prescribed north of Florida, we would not necessarily propose something higher in Florida. But we do not feel that this is the appropriate time to make a specific recommendation. Well, to be perfectly frank, we think the present scale of rates prescribed in Florida is fundamentally on the wrong basis, and what we have in mind when called upon to suggest a line of rates to suggest some rather fundamental changes in that basis. Now, for example, it is our thought that the rates at present prescribed by the Florida Commission for short distances are too high, and for long distances, too low. And what we have in mind, suggesting a scale of rates predicated on lower rates for short distances up to 150 miles, and higher than the present rates for distances greater than that.

On 61 per cent of our fertilizer, the average haul is 375 miles, and we have always thought it was exceedingly un- [fol. 482] just for the Florida Commission to require us to

haul that for a car haul of 10 cents a ton a mile, while you would haul the fertilizer one way, and the empty car the other. We think that you, Mr. Burr, will agree that the rate is too low.

"By Com. Eastman:

"Q. Now, on interstate traffic. Whatever the interstate rates are, do you join in the proposal of the other carriers with respect to interstate rates?

"A. I have undertaken, Mr. Commissioner, to make our position plain in that. They have suggested the Royster scale intrastate.

"Q. Interstate also.

"A. Well, we want to take it as we come to it. We are not prepared at this time to join in asking for the Royster scale in Florida, for the reason that we would prefer to wait and see. * * *

"Q. (Interrupting.) I am not talking about intrastate. I am talking about the rates which apply to your interstate traffic. We have got that right here now."

At this time we are not asking for any change in our interstate rates. We don't think they ought to remain as they are, but I said, at this time we are not asking for any change. We are going to state our position after the Commission decides what would be fair and reasonable rates in the States north of Florida.

Our position is that our rates should be the same, whether interstate or intrastate. We want the combination basis on Jacksonville preserved; and we want our factors south of Jacksonville the same as intrastate.

We want the combination on interstate business. We want our full combination on interstate, and not 10 per cent less than that combination, as would exist if it was handed to us in intrastate commerce. What I mean to say, that we wanted the same rates from that interchange track, whether it originated at Jacksonville, Blackshear, or Albany, because the transportation conditions are exactly the [fol. 483] same with us, and we cannot see upon what grounds we should charge a man at Jacksonville one rate and a man at Blackshear another rate, and a man at Albany another rate, and the man from Atlanta another rate.

I do not know that I understand what you have in your mind, but I will state this, that it is another one of those cases where the Coast Line and the Seaboard get into controversy with you and their shippers, and they went there on the Class P, and made some compromises by reductions to avoid lawsuits, and when you issued the order, you made it apply on the East Coast. We applied on intra-, did not apply on interstate. We went into court; we did not win on that order, for the reason the Florida Statutes under which we were proceeding provided that any order of the Florida Commission shall be considered sufficient for prima facie evidence of its reasonableness, and they said we had not affirmatively proved that it was unreasonable, because the experts of the Commission and the experts of the Railroad disagreed.

They had to accept your order as prima facie evidence of its reasonableness. They reached the conclusion in that proceeding that we were making 10 per cent on that traffic, but it was not, because we were not even paying interest on our bonds, and nothing on the stock. That order said that we were making 10 per cent on the lowest class traffic that we were handling, that paid about 8 cents a car mile, and the fact was at that time we were not doing anything better than earning operating expenses on the whole traffic, including the high class traffic. (Tes. 634-639.)

I did not mean to bring up all of these questions, Mr. Burr, in answering yours, but I hope that I have made myself clear in that our transportation conditions are identically the same, because the business is all delivered on one track, and it is not intended as a device to enhance our [fol. 484] revenue, but it is intended to represent the true rate based on transportation conditions.

Is is my contention that we have nothing to do with the Seaboard or the Coast Line, but that our rates should be based on our operating conditions, and that our operating conditions are so dissimilar to those lines that any rate that might be found reasonable for those roads would not necessarily be reasonable rates for our road. That is not to say that we are necessarily entitled to higher rates than they are. If our operating conditions justify it, you might make it lower. But what I am trying to convey to your mind is

that we do not approve of this dead level of rates, and uniformity without regard to your operating conditions.

"Q. Well, if we are going to give regard to operating conditions, you have got to have something to compare them with. And in Florida you have got comparison right there. Now, are your operating conditions worse than that of the Seaboard Air Line?

"A. Yes, sir.

"Q. You have higher traffic density?

"A. Yes sir; and a higher operating cost.

"Q. And a higher passenger traffic, haven't you?

"A. Yes, sir; and it is confined to a class of traffic that necessitates a very high cost for handling, and we do not have the phosphate rock, lumber and naval stores moving in heavy volume throughout the year the same as the Coast Line and the Seaboard have.

"Q. Is not your net operating revenue per mile of road higher than that either of the Coast Line or Seaboard in Florida?

"A. Well, I did not make that comparison before coming to this hearing, Mr. Commissioner. But I would be very glad to make that comparison and furnish it to you in this case.

"Com. Eastman: I will be glad to have it."

[fol. 485] The Atlantic Coast Line and the Seaboard Air Line have a very large tonnage of phosphate rock, road-building material, forest products and naval stores moving throughout the year. It moves in cars to practical capacity of the equipment. That enables them to have uniform mechanical operating conditions throughout the year. They are, therefore, not so much subject to fluctuation in operating conditions, and costs as a railroad who has practically none of that class of traffic. Our traffic is composed almost exclusively of the fruit and vegetable traffic, and the passenger traffic.

Then, within the past two years that has been supplemented very largely by building materials. For the past two years the erection of apartment houses and hotels has practically doubled each year, and it looks as if it will double this year over what the total capacity was last year.

Now, it just so happens that our fruit and vegetable traffic and peak passenger traffic comes along about the same time. And, I will tell you something that even you probably have not. * * * That is not true of the Coast Line too, to the same extent because their fruit and vegetable traffic comes later. Oranges possibly are moving out in volume at that time, but not vegetable traffic. Now, then, here is a development that may not have occurred to you. Our building operations now are heavier in the winter time than they are in the summer, due to the fact that during the winter months the skilled laborers from the far North, in the Northern territories where it is cold, and there is not much building operation, they come down there, and they are enabled to get the skilled mechanics in larger numbers, and get better results out of it, so that it gives the building materials, and fruit and vegetable traffic, and the passenger traffic, within a period of about three months. Now, as you well know, we have to make our estimates, and we have to be prepared to handle it, the maximum that business that comes within two or three months. And a condition might [fol. 486] develop overnight that would upset every estimate that has been made, and that the growers themselves cannot tell hardly from week to week just what the movement is going to be the following week, due to cold weather, which will retard it, and warm weather, which will hasten it, and a little cold weather kills it, and a little rain drowns it out. Now, that means that we have got to be equipped to handle the maximum. Now, what are we up against right now? While we have had a big increase in earnings this past year, we have had a decrease in net earnings. We had congested conditions, and everyone knows that it is expensive to operate under congested conditions, where you have more business than you can reasonably and promptly handle. Now, as a result of that, we are making large capital expenditures to double-track the line, to take care of the peak business of two or three months, and all of that equipment, cars, engines and double track, will be idle for nine months. Now, do you know of any railroad in Florida that operates under any condition even approaching that? (Tes. 639-644.)

"Q. I know this too, that the Seaboard Air Line thought that the business was attractive enough on the Florida East Coast Railroad to build a railroad down there to divide up the business with you.

"A. There is a case, too, where I think they are using mighty poor judgment, because I can tell you that they built 70 miles of railroad there from Okeechobee to West Palm Beach, where they will never handle a pound of freight, and never produce a pound of freight, and I don't understand that to be good judgment."

Now the failure to produce these forest products that I mentioned that are produced on the Atlantic Coast Line, makes it very necessary that we haul lumber and the like down the East Coast in heavy quantities, according to your own statement—upon which you get the long haul, and [fol. 487] 13th Section violation on every bit of it.

"Q. That is because you are hauling from Georgia on an old condemned rate?

"A. Not condemned by the Commission."

Jacksonville, geographically is the natural gateway for the Florida East Coast. I do not know that you would call our hauling of cement enormous, but there is a very large building operation going on on the East Coast. I know that the cement people say that the biggest per cent of increase in consumption of cement in Florida is on the East Coast Railroad. (Tes. 644-645.)

I understand that the biggest per cent in the South, next to North Carolina, is in Florida. I did not know, further, that they have showed by satistics that the loading on our line is heavier than on any other line in the South, but I will accept that. I did not know that they showed that the average loading on our line for practically two years was heavier than in any other territory in the country, on cement, but I will accept it, I think it is true.

"By Mr. Tench:

"Q. Mr. Kirtland, you made the statement twice that it had been universally agreed that rates to Florida should be somewhat higher than the rates generally in the South-

east. I think the Florida Commission would very much like for you to modify that word universally agreed.

"A. Well, I can quote the Florida Commission as my authority.

"Mr. Burr: No use to quarrel with him about it, let him say it.

"The Witness: I will quote the Florida Commission as good authority; they have stated that repeatedly in their Annual Reports, and otherwise.

"By Mr. Burr:

"Q. Have you read the last Annual Report?

"A. I have not seen it.

"Mr. Burr: Well, I commend it to you." (Tes. 646-7.)

(Witness excused.)

[fol. 488] F. A. Burke was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

I am connected with the Nashville, Chattanooga & St. Louis Railways; I have had a number of years' experience in traffic matters, particularly in connection with the traffic department of that company and I am familiar with the adjustment of fertilizer rates in Tennessee.

In my testimony I will deal particularly with that situation. I have prepared a series of exhibits, numbered 220 to 233 inclusive, which I desire to offer in evidence at this time.

(The statements were thereupon received in evidence, and marked "Respondents' Exhibits Nos. 220 to 233, inclusive, Witness Burke.")

The movemnt of fertilizer from manufacturing points in Tennessee is under specific rates with the exception of rates from Chattanooga to C. N. O. & T. P. stations, and for those the mileage scale is in effect, and with that exception the fertilizer in Tennessee moves under specific commodity rates.

We have had no proceedings before the Interstate Commerce Commission involving the general level of fertilizer rates, but when we attempted to increase the rates on fertilizer in Tennessee, in line with Ex Parte 74 increases of 1920, the Tennessee Railroad Commission sustained the increased rates on fertilizer and a number of other commodities, and they set that matter down for hearing at Nashville, Tennessee, on November 11th and 12th, 1920. At the hearing before the Tennessee Commission Mr. T. M. Henderson, Commissioner of Nashville Traffic Bureau appeared on behalf of the Nashville fertilizer shippers, and Nashville is the largest fertilizer manufacturing point in the State of Tennessee. The average annual movement from Nashville of fertilizer is approximately 175,000 tons. Mr. Menzies' exhibit shows 80,000 tons, but our investiga- [fol. 489] tion developed an actual average movement of 175,000 tons, intrastate and interstate.

Mr. Henderson appeared before the Tennessee Commission and stated as follows:

"Mr. Commissioners, I am representing the Nashville shippers on all of these commodities involved in this suspension, except the fertilizer shippers, who told me that they have no complaint about the Tennessee rates on fertilizer. So far as Nashville shippers are concerned, and no objection to the increase provided of course it is made general. They have no complaint about the fertilizer situation."

And then he further goes on to say:

"Sometime ago I had a conference with one or two of the fertilizer people, and they stated at that time that the Tennessee fertilizer rates were, they thought, fairly in line wih other rates on fertilizer, and that they did not oppose the increase in those rates. Personally, I never made any examination of them. They said they were satisfied, and that was all I wanted them to be, so I did not go any further." (Tes. 647-650.)

In my exhibits I have undertaken to show the general adjustment of the interstate and intrastate rates in Tennessee, as at present in effect, and as it will be under the

adjustment now proposed by the carriers. I have shown on my first exhibit the location of the fertilizer factories in the State; they are Nashville, Tennessee, Chattanooga, Tennessee, Knoxville, Memphis and Mount Pleasant, Tennessee.

I will first take up the individual situation of the N. C. & St. L. Railway, because the Nashville, Chattanooga & St. Louis Railway operates the greater distance of any line in Tennessee. Our mileage in Tennessee is 926 miles, and that is greater than the mileage of any other individual line in that State.

My Exhibit No. 221 shows the rates from Nashville, Tennessee to Nashville, Chattanooga & St. Louis Railway [fol. 490] agency stations. Prior to the fall of 1899, no specific commodity rates were provided on fertilizer from Nashville to N. C. & St. L. Railway stations. In the fall of 1899 any-quantity commodity rates were established on the Class N basis. Class N was the lowest class rate that we had over our line. Class N applied on carload shipments at that time, of sand, gravel, lime, brick and other commodities, and we took those Class N rates and applied them on fertilizer, any-quantity, from Nashville to N. C. & St. L. stations. Now, rates originally established on this basis have continued in effect until this time, to stations south of Nashville, Tennessee, except that they have been increased under General Order 28 and Ex Parte 74, and reduced 10 per cent, under Docket 13293. From stations west of Nashville, they continued on the basis originally established on this basis have continued in effect until this time, to stations south of Nashville, Tennessee, except that they have been increased under General Order 28 and Ex Parte 74, and reduced 10 per cent, under Docket 13293. From stations west of Nashville, they continued on the basis originally established until April, 1922, when they were reduced under the 1303 revision.

It will be noted that from this exhibit, that we take in a number of cases, substantial reductions in our present rates. For example, to Murfreesboro, Tennessee, from Nashville there is a substantial movement of fertilizer, and the present rate is $1.80. We proposed $1.58. There is a substantial movement from Nashville to Fosterville, and we re-

duced the present rate from $2.25 to $1.80; to Tullahoma, Tennessee, there is also a substantial movement, and the present rate will be reduced from $2.59 to $2.14. To our branch line points we have also made reductions, and there is a movement to these branch line points. On the first page is shown the Shelbyville Branch. The present rate from Nashville to Shelbyville, Tennessee, is $2.59; under the pro- [fol. 491] posed scale the rate to Shelbyville will be $2.03. On page 2 is shown the Sequatchie Valley Branch. To Jasper, Tennessee, on this branch, there is a considerable movement, and the rate is reduced from $3.94 to $2.82 per ton. To Pikeville, Tennessee, there is a larger movement than to Jasper, that is a point at the end of the branch. There the rate is reduced from $5.40 per ton to $3.27 per ton.

Now, on our Sparta Branch, and which is a mountain branch, there is a large movement. For example, to Manchester, Tennessee, there is a big movement, and the rate is reduced from $2.59 to $2.37. Sparta, Tennessee, is practically at the end of the branch, or near the top of the mountain, and there is a substantial movement of fertilizer from Nashville to Sparta, and there the rate is reduced from $3.72 to $2.70.

Our greatest movement from that branch is lumber and coal, but there is some sweet potatoes grown, and some tobacco grown on the Sparta Branch, but I think the fertilizer must be used up there mostly for growing corn.

On page 3 is shown our Huntsville Branch. That branch is a branch which we operate with 20 miles of River transfer between Hobbs Island and Guntersville to Albertsville and Boaz on that branch, south of the Tennessee River there is a substantial movement of fertilizer from Nashville, and the rate is reduced to those points from $3.42 to $3.27.

"Q. Do you propose to apply straight mileage on that branch, or are you going to have constructed mileage for the river crossing?

"A. It depends, Mr. Commissioner, upon what we get from 13494. The present proposal is straight mileage scale."

These rates are figured out on straight mileage. To points on what is known as the Middle Tennessee and Ala-

bama Branch, abbreviated to read M. T. and A. Branch, there is a substantial movement of fertilizer, and to Taft, Tennessee, for example, the rate was reduced from $3.15 to [fol. 492] $2.82. To Capshaw, Alabama, the rate is reduced from $3.15 to $2.93. The next division shown is the W. & A. Division. That is operated as our Atlanta Division, it is the Western & Atlantic Railroad, which is leased from the State of Georgia, and the rates to stations on our Atlanta Division were originally made in competition with the rates from Charleston and Savannah to stations in Georgia, and we have considered those rates on a very low level. There will be some increases, but the increases, as will be noted, are not substantial. (Tes. 650-654.)

Now, it will be noted also that there are increased from Nashville to Chattanooga and Gadsden Group, Huntsville, and Atlanta, Georgia. Now, these are commonly known as junction or common points in the South, and the rates to these points were originally made in line with the rates from the Ohio River. In fact, Nashville was made a dollar a ton, and the rates from Louisville, Ohio River Combination at that time, was recognized at Nashville, and they were placed on differential basis in line with the Ohio River Crossings, and that provided very low rates from Nashville to these Southeastern Common points. Now, subsequent to the original issuance of these rates, the rates from Ohio River Crossings were increased, but we made no corresponding increase in the rate from Nashville, so Nashville has been depressed under the Ohio River Crossings.

Pages 4 and 5 of my exhibit shows the rates from Nashville to N. C. & St. L. stations west of Nashville, Tennessee. Rates to these stations were reduced under the revision of Docket 1303, the Mississippi Valley revision which Mr. Chadwick explained in some detail yesterday.

My Exhibit No. 222, which I offered in connection with this Mississippi Valley section of my Exhibit 221, shows the rates on fertilizer from Nashville to West Tennessee, that would have been in effect had the revision not been made [fol. 493] in 1303, or in other words, the exhibit shows the modern equivalent of the rates in effect prior to the 1303 revision contrasted with the present rates, and also compared with the rates we are now proposing. It will be

noted from this exhibit that we have made some substantial reductions in 1922 in the rates to this territory from Nashville. And that the proposed rates in a number of cases do not even equal the rates that were in effect prior to April, 1922.

The rates that are shown in the first column on that exhibit, being the rates prior to I. & S. 1303 revision are the rates that were in effect at the time when Mr. Henderson made the statement which I quoted a minute ago, before the Tennessee Railroad Commission. And these rates from Nashville to our other stations that I have just pointed out, where we make these reductions, they were also in effect. My Exhibit No. 223 shows the rates from Nashville to stations on lines other than the N. C. & St. L. Railway in Tennessee. The first three pages cover the situation on the Louisville & Nashville Railroad. It will be noted that the changes in the Louisville & Nashville rates are practically the same as those of the N. C. & St. L. Page No. 4 shows rates from Nashville, Tennessee, to Tennessee Central stations. In this connection, I desire to call attention to the fact that the Tennessee Central Railway has notified the Southern Freight Association that it was their intention to apply the short line scale over its line, and that it would not be their purpose to ask Fourth Section relief in connection with the scale of rates as finally adopted for application between the various points in the Southern Territory.

The Tennessee Central has generally been regarded as a rather weak line. The Commission has given it Fourth Section relief because of its financial condition. It was covered by an order in I. C. C. Docket 9190, the Murfreesboro Case. It appears from page 4 of this exhibit this proposal will be [fol. 494] a rather substantial reduction in rates on the Tennessee Central Railroad. I don't know if that road is getting stronger, or whether exceptions are being made in fertilizer. Pages 5 and 6 show the rates from Nashville to Mobile & Ohio Railroad and Illinois Central Railroad stations in West Tennessee. These rates are the result of the Commission's decision in 1303, and represent the Valley revision. This was explained by Mr. Sheppard and Mr. Chadwick yesterday.

Page 7 shows the rates from Nashville to C. N. O. & T. P. Railway stations. It will be noted that there is not a sub-

stantial change proposed in the rates from Nashville to Cincinnati, New Orleans & Texas Pacific Railway stations.

Pages 8, 9 and 10 show the rates from Nashville to Southern Railway stations in East Tennessee. These rates have been carried on a very low level. They were originally established the same as from Atlanta, Georgia. Atlanta, Georgia, to Southern Railway stations is a single line haul, and the Nashville, Chattanooga & St. Louis Railway established rates from Nashville to Southern Railway stations for the joint haul the same as published by the Southern Railway for their single line haul from Atlanta, Georgia. These rates have been a matter of complaint for the past 25 years by the Southern Railway. They went so far at one time as to appeal to the Commission to have their line eliminated as a participating carrier in our tariff. But because of a change in traffic officials, and the fact that the Southern Railway entered Nashville at one time with their own line—they leased the Tennessee Central for awhile—we have been allowed to continue these rates in effect. Now, it is proposed to divide these rates along with the others, and it will be noted that in a number of cases that we are proposing reductions in the rates which have been objectionable to the Southern Railway for this long period of years.

My Exhibit No. 234 shows the rates from Chattanooga to Nashville, Chattanooga & St. Louis Railway stations. [fol. 495] This exhibit is substantially the same as the Nashville exhibit, and I don't think it necessary to burden the record with pointing out the different details.

Exhibit No. 225 shows the rates from Chattanooga, Tennessee, to the territory east of Nashville, Tennessee. It is similar to the previous exhibit, and compares present rates on fertilizer with the rates on the proposed scale. (Tes. 654-58.)

Exhibit No. 226 shows the present rates on fertilizer compared with the proposed rates from Memphis, Tennessee, to Nashville, Chattanooga & St. Louis Railway stations. Conditions here are similar to those at Nashville. In other words, to stations west of Nashville the rates are increased because the present rates in that territory reflect the 1303 revision. To stations south of Nashville the rates are reduced. I will state, though, for the information of the Commission, I know of no movement of fertilizer from Memphis to stations on the N. C. & St. L. Rail-

way south of Nashville. So far as my investigation goes, the movement of fertilizer from Memphis, as far as Tennessee is concerned, is confined to the western portion of the State.

[fol. 496] My Exhibit No. 227 compares the present rates from Memphis, Tennessee, to points on lines other than the N. C. & St. L. in the Western section of Tennessee, with the rates on the proposed scale. There are a number of increases in these rates because the present rates, as explained before, reflect the Memphis-Southwestern revision or 1303 revision. That I. & S. 1303 readjustment was primarily a Fourth Section realignment of the rates.

My Exhibit 228 compares the rates from Knoxville, Tennessee, to a territory east of Nashville with the rates on the proposed basis. There is, so my investigation develops, a substantial movement of fertilizer from Atlanta, Georgia, to Tennessee points, especially on the line of the N. C. & St. L. Railway, and for that reason I have shown in my Exhibit No. 229 the present and proposed rates on fertilizer from Atlanta to N. C. & St. L. Railway stations. When the fertilizer factories were originally established at Nashville, in order to assist them in establishing their products to the Southeast and cotton sections, the N. C. & St. L. Railway established a low line of rates to Georgia destinations, which were made in line with the rates from South Atlantic Ports to the same destinations, which were, as has been testified here, on a very low level. After we had established these rates from Nashville southbound in order to pacify the Atlanta shippers, or manufacturers of fertilizer, we established northbound to N. C. & St. L. Railway stations from Atlanta practically the same scale that we used in publishing rates from Nashville to Georgia destinations. These rates we have always considered are on a very low level, and it will be noted that in a number of cases substantial reductions are made in the present rates.

On the first page of the exhibit will be noted that the rates from Atlanta to stations intermediate to Chattanooga [fol. 497] and Nashville, that the Nashville rate is not exceeded. Now, prior to the revision of the Commission in the Murfreesboro Case, we had higher rates to these intermediate points than to Nashville—Nashville being a depressed point, located on the Cumberland River. Under the Commission's decision in Docket 9180, and the Fourth

Section order issued in connection with the Murfreesboro case, Fourth Section Order 7566, we were denied relief at Nashville against these intermediate points, so in order to escape the violation we reduced the rates to intermediate points, so as to not exceed Nashville. This reduction was made along about 1922, and while it will be noted that the proposed rates do not substantially increase the existing rates from Atlanta.

My Exhibit No. 230 compares the proposed rates on fertilizer with the rates on coal from Clifty, Tennessee, to stations on the N. C. & St. L. Railway intermediate to Clifty, Tennessee, and Memphis, Tennessee. It also shows the per car revenue on coal as contrasted with the per car revenue on fertilizer, the latter on the basis of the proposed scale. It will be noted that in practically every instance that we receive a greater revenue on coal than we would under the proposed fertilizer scale, that is, on this local traffic on the N. C. & St. L. Railway in Tennessee. That is revenue per car.

Taking the Nashville distances to Tennessee destinations, I would not say that coal moves substantially greater distances than fertilizer. Nashville, Tennessee, ships fertilizer all up the Southern Railway, as far as Bristol, Tennessee. It has shipped all over Western Tennessee. The weighted average haul, in my opinion, would be slightly over 100 miles; that is, the weighted average haul in this territory.

We do handle coal over our lines to Georgia points which would be substantially longer hauls. When we begin to get up into the long hauls, the per car earnings begin to be greater on fertilizer, because of the competition that [fol. 498] we meet there on coal. In other words, the Western Kentucky—the rates on coal from Western Kentucky mines on the Louisville & Nashville, and the Illinois Central. We have to meet that competitive condition in West Tennessee, and that reduces, or holds down the rates on coal in that territory. (Tes. 658-662.)

Exhibit No. 231 compares the rates and car earnings on crushed stone with the rates and per car earnings on the proposed scale on fertilizers. It will be noted that the per car earnings on stone is only slightly less than the per car earnings on the proposed scale on fertilizer. Now, this

crushed stone is worth about $1.50 f. o. b. the quarries. It is used in Tennessee for road-building purposes, and these rates have been reviewed by the Tennessee Commission and have not been condemned. I could not say that they have been specifically approved, but they have never condemned the measure of these rates on crushed stone. Now, this is not pulverized limestone, to which Mr. Orr called attention this morning with Mr. Drescher. This is stone known as crushed stone, and is used for road-building purposes in Tennessee.

Exhibit No. 232 compares the per car earnings on cement from Nashville, Tennessee, to Nashville, Chattanooga & St. Louis Railway stations, with the per car earnings on fertilizer. In filing this exhibit I wish to call your attention to the fact that the rates I show here on cement from Nashville are the present rates. The carriers are proposing revised rates on cement, and also the shippers have a scale which they are proposing on cement, and in order to remove any question, I have used the present rates under which cement is moving at the present time.

My Exhibit No. 233 is similar to 232 and shows the rates on cement and per car earnings compared with fertilizer, from Richards City, Tennessee. Richards City is a large cement producing point on our line, and ships to stations on [fol. 499] the N. C. & St. L. Railway.

Nashville, Tennessee is quite a large milling point, and there is a very considerable quantity of mill products shipped from that point; flour and wheat.

I have investigated through our superintendents the question of using cars that have been loaded with fertilizer, and it appears to be universally reported that cars once loaded with fertilizer cannot be loaded with any other commodity that would absorb odor within approximately 90 days. That is a car had been loaded with fertilizer, and were loaded with flour within 90 days, that the flour or feed would absorb the odor of the fertilizer, and for that reason the cars once loaded with fertilizer cannot again be used until the odor has been eliminated. This odor, so I am advised, remains in the car after it has been cleaned out, and it is the judgment of our superintendents that at least 90 days is required to rid a car of this odor.

That is the report I get from our superintendents, that they must be very careful to see that no commodities loaded

in sacks or burlap is placed in a car that has been loaded with fertilizer until the sulphuric acid that might have accumulated in the cracks has evaporated, that the sulphuric acid leaks out of the fetilizer, that is, from the burlap or cotton bag. There is no free sulphuric acid in the fertilizer; I understand there is sulphuric acid used in making acid phosphate. The sulphuric acid is used with the phosphate rock to make acid phosphate.

"By Mr. Cotterill:

"Q. Well, was it your impression that the acid phosphate possesses those qualities which Mr. Gwathmey assumed were possessed by acid?

"A. This is the drainage out of the acid phosphate that is loaded into the car, Mr. Cotterill.

"Q. Drainage of what?

[fol. 500] "A. The acid, so I am advised by our superintendents.

"Q. Mr. Burke, acid phosphate is a dry material; there is no drainage from acid phosphate. I think perhaps there is a confusion there of some sort." (Tes. 662-665.)

To clear that point, I had an understanding from our operating people, that they recognize that when a car has been loaded with fertilizer, that it cannot safely be used thereafter for the shipment of flour, and meal, and things of that sort, in sacks, for approximately 90 days.

With respect to this matter of minimum weight, and the inclusion of various articles in the fertilizer list as proposed, the statement made by Mr. Ketner in regard to that matter, coincides exactly with our view. That is, we do not wish to commit ourselves to a continuous application of the specific list indefinitely. In other words, conditions may change, and the carriers may want to add some more commodities to the fertilizer list, or some of the commodities should be eliminated from the list. I have particularly in mind the item of cottonseed meal, and as to minimum weights, it is our view that the classification minimum should be used in connection with the fertilizer list. (Tes. 666-667.)

Cross-examination:

We have not as yet fully determined the rates that will be applied to Tennessee River Landings. There is a movement to the landings on the Tennessee River, but until we have had an opportunity to confer or correspond with the boat lines, we would ask not to put in that statement. Between now and the next hearing we will probably have sufficient time for determining the measure of such rates as we suggest. I will say, that it had been the intention to include in the traffic test the movement to the River Landings.

"Q. In respect to this matter of the subsequent use of cars in which fertilizer has once been loaded, did your in- [fol. 501] formant make distinction whatsoever as between the different articles which are loosely called fertilizer? Take, for instance—let us take nitrate of soda, kainit, acid phosphate, a considerable variety of articles in the list, constituting a large part of the total tonnage have no odor at all, have they?

"A. I am not an expert on this odor business. I gave you the source of my information, Mr. Cotterill, that that is the report I obtained from my superintendents on investigation."

I am not familiar with the loading of cyanimid fertilizer material. As far as you know, it does not put any odor in a car.

Judging by the tonnage statements as I have seen, the principal movement in my territory is commercial fertilizer and acid phosphate. I would judge that those are the fertilizers which our operating people have dealt with, from the information I have obtained from the tonnage statements. (Tes. 667-670.)

"By Mr. Cotterill:

"Q. Mr. Burke, what do you understand commercial fertilizer to be, as distinguished from the things that I was enumerating?

"A. I was going by the billing; what is billed as complete fertilizer, and what is billed as acid phosphate, and so on."

Complete fertilizer is nothing in the world but a mixture of one or the other, or maybe two or three of the articles that I described; put together in a hopper, and mixed up.

I would not be in a position myself to testify that it is only as to tankage, and in rare instances of fish scraps, that there is any odor at all in the movement of fertilizer not of my personal knowledge.

Taking Exhibit 231 here, where I compare crushed stone with fertilizer, the earnings per car: It is, generally, a fact that we load that crushed stone in open top equipment.

"Q. That is around 22 tons dead weight to the car there, of crushed stone, is it not?

[fol. 502] "A. I don't know what the dead weight is, Mr. Orr, in that."

We have got 45 tons of stone going in there, but as to whether, in our fertilizer, we have got about 18 ton car, I couldn't tell you; I don't know. (Tes. 670-672.)

(Witness excused.)

J. O. Gill was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is J. O. Gill, and I am employed by the Gulf Mobile & Northern Railway Company, with headquarters at Mobile, Alabama, as freight traffic manager, which position I have held since 1922, having been connected with the properties prior thereto in the traffic department in various capacities. Prior to coming with these companies I was with the general freight office of the Illinois Central at Memphis. The Birmingham & Northwestern, and the Gulf, Mobile & Northern Railway Companies are here seeking authority to meet the rates at the junction points, and to establish, publish and maintain rates to local stations on these lines 50 cents per ton higher than the rates suggested or established for trunk line application.

I would like to offer at this time a series of seven Exhibits, subject to any objection, of course.

(The statements were thereupon received in evidence and marked "Respondents' Exhibits Nos. 234 to 240, inclusive, Witness Gill.")

Exhibit 234 is a blue print showing the physical and geographic location of these lines and the territory served, as well as trunk line connections. The Birmingham & Northwestern Railway Company extends from Jackson, Tennessee, in a generally northerly direction, is 49 miles long, and is in competition with strong trunk lines at Jackson, Bells, and Dyersburg. The territory traversed by this [fol. 503] line was without railroad transportation. The necessity for such transportation was recognized by the business interests, a company organized and the railroad built in order to serve this local territory. This line is largely dependent upon the local traffic to make its operating expenses. The Gulf, Mobile & Northern constructed in sections, as lumber roads, but I was dealing here with the Birmingham & Northwestern.

The Gulf, Mobile & Northern extends from Mobile, Alabama, to Jackson, Tennessee, in a general northerly direction, through the States of Alabama, Mississippi, and Tennessee, and traverses a very sparsely settled country, which is generally poorly developed. It competes with strong trunk lines at Mobile, Laurel, New Albany, Ackerman, Meridian, Newton, Houston, Middleton, Tennessee, and Jackson, Tennessee. This line and predecessor companies were built primarily for the purpose of tapping the virgin forests which have been and are being rapidly denuded.

Exhibit No. 235 is a list of junction points reached by the Birmingham & Northwestern Railway, and the Gulf, Mobile & Northern Railroad, arranged in alphabetical and geographical order, each road shown separately. The exhibit also shows lines other than these lines, which reach the said junction points. There is a junction point at approximately an average of every 50 miles.

The Interstate Commerce Commission, upon numerous occasions, as well as the State Railroad Commissions of Alabama, Mississippi and Tennessee, as I shall point out specifically later on, recognize the necessity for relief in connection with rates to and from stations on these lines.

The Birmingham & Northern, and Gulf, Mobile & Northern, as a rule, do not make the rates at the junction points.

That is, they have not in the past. It may be that under a mileage scheme of rates these lines would make the rates from certain Ohio River Crossings to certain junctions, but [fol. 504] they are here seeking authority to participate in rates at the junction points made by trunk line applications in cases where these lines do not make the mileage; because, as we will show a little later, they are not in a position financially to operate rates on trunk line basis.

Exhibit 236 is a statement of rates showing the mileages, present rates, rates proposed for trunk line application, as well as rates proposed for these lines, reflecting 50 cents per ton higher than proposed for trunk line application from Ohio River Crossings, Memphis, New Orleans, and certain typical Southeastern points.

Exhibit No. 237 is a statement showing the average revenue per ton mile on fertilizer, as well as per car mile and per car, also revenue per ton mile, per car mile, and per car, and basis proposed rates on fertilizer. The average revenue on all traffic for the year ending 1924, on the Gulf, Mobile & Northern Railroad was 13 mills, the average revenue derived from proposed rates on fertilizer would be 14.8 mills. (Tes. 672-6.)

In some respects it is true that the use of the Third Royster Scale would in many cases produce higher than our present rates, than if no arbitrary of 50 cents were added to the rates that were revised under Docket 1303, or from Ohio River Crossings, also for local application on our line. In view of that fact, we think there is a necessity for adding of the 50-cent arbitrary. The present rates are not exactly satisfactory to us from the Ohio River Crossings, and from the Southeast those rates are higher. Not in all cases, but the rates from Atlanta to Bay Springs, for instance, $4.95, the Royster scale would make $4.95. We did not think we could get enough out of that rate to really pay us, and therefore we are asking for something over the scale in these rates. We are asking for something more than we have now got. The rate is on combination [fol. 505] from many Southeastern points. These are merely shown as typical. I might state at that particular point, that we have found it necessary to file a general Fourth Section application under Docket 1303, because of our financial situation, and that has been heard.

It has been, and is the desire of these lines to operate rates strictly on Fourth Section principles where possible or consistent, but our situation prevents such peculiar circumstances as to make special treatment as to Fourth Section relief necessary. It has been estimated that 62 per cent. of the voting population of the State of Mississippi, in which state there are situated 397 miles of the Gulf, Mobile & Northern Railroad, exist within a radius of 15 miles each side of this line. The following counties in Mississippi are dependent, or practically so, upon the Gulf, Mobile & Northern Railroad for transportation facilities: George, Perry, Greene, Jasper, Neshoba, Winston, Pontotoc, and Tippa. Populations of these counties are:

George County	5,564
Greene County	10,430
Perry County	8,981
Jasper County	18,508
Neshoba County	19,303
Winston County	18,139
Pontotoc County	15,419

In addition to these counties the Gulf, Mobile & Northern Railroad serves to a very large extent the following counties: Jones, Newton, Choctaw, Webster, Chickasaw, and Union Counties, making a total of 14 counties in the State of Mississippi either solely dependent or largely dependent upon the Gulf, Mobile & Northern Railroad for railroad transportation. Thus, it is seen that, although the country is at this time poorly developed from an agricultural and industrial standpoint, aside from products of the forest, the Gulf, Mobile & Northern Railroad is obligated to serve an important territory, the development of which obviously cannot be carried forward without efficient railroad trans- [fol. 506] portation. Products of the forest comprise an average of approximately 65 per cent. of the tonnage of this line. Forests are becoming very rapidly cut out, the lumber manufactured and shipped. Consequently, unless this territory can be developed, this line views with alarm the situation in which it will be when this lumber is gone, unless vast developments are made. These lines have a development department, and are doing everything consistent to develop the territory, but at best the progress is slow

and without money nothing can be done. These lines find it necessary to develop through traffic for reasons which have been shown, and this can be done only by efficient operation. The importance of prompt movement of traffic is of course recognized. Consequently, unless this service is performed, the development of this territory cannot go forward. Anticipating the loss in revenue from forest products, these lines realize the necessity of competing with the strong trunk lines for other traffic. This traffic cannot be secured without efficient service. These lines, as will be pointed out, contemplate improvements that will permit them to adequately serve the public, compete for traffic, and carry out a development program, but which cannot be done without relief. It is of course understood by all concerned, including shippers and receivers, that the differential will accrue solely to these lines.

The average revenue per ton mile on the Gulf, Mobile & Northern Railroad for the year ending December 31st, 1924, was 13 mills, whereas the average revenue on fertilizer, proposed, will yield 14.8 mills. Exhibit 237 is a statement showing present rates, revenue per ton mile, per car mile and per car, as well as revenue per ton per mile, per car mile and per car, basis proposed rates on fertilizer. This statement is representative of the situation.

The Interstate Commerce Commission has heretofore granted these lines relief in view of the unusual circumstances. By application bearing the Interstate Commerce [fol. 507] Commission's No. 4948, conditions peculiar to these lines were set forth and conditions have not changed to warrant a strict observance of the Fourth Section, but certain other additional conditions and circumstances now exist that make relief necessary. These circumstances are not only indicated herein, but have been recognized by the Commission on numerous occasions in which relief has been granted. To illustrate: Fourth Section Orders 2531, 2754, 2766, 3866, 4303, 7026, 8843, and 8895. Fourth Section Order 2531 granted Birmingham & Northwestern Railway permission to establish from and to Jackson, Bells, and Dyersburg, Tennessee, the same rates as were currently in effect from and to these points via other lines in cases where the rates from and to Jackson, Bells, and Dyersburg were lower than the rates currently in effect from and to intermediate points. (Tes. 676-680.)

This Order also authorized the Birmingham & Northwestern Railway to establish and maintain rates from and to local stations bearing reasonable relation to the rates from and to Jackson, Bells and Dyersburg.

Fourth Section Order 2766 granted the Birmingham & Northwestern Railway permission to maintain $1.35 per net ton on coal from Louisville & Nashville Railroad Kentucky mines to Dyersburg, Tennessee, and to establish a rate of $1.75 per ton from the same points to intermediate points on the Birmingham & Northwestern Railway without observing the long-and-short-haul provisions of the Fourth Section.

Fourth Section Order 2754 granted the Gulf, Mobile & Northern Railroad permission to maintain rates from Gulf, Mobile & Northern Railroad stations to Ohio River Crossings and Memphis, Tennessee, when via the gateways of Montgomery, Birmingham and Chattanooga the same as in effect via the direct lines to Ohio River Crossings and Memphis and to exceed these rates to intermediate points the same as the rates from the gateways of Montgomery, Birmingham and Chattanooga to intermediate points exceed [fol. 508] the rates to Ohio River Crossings. This Fourth Section Order also granted the Gulf, Mobile & Northern Railroad authority to meet the rates of the strong trunk lines from our junctions to Ohio River Crossings, and to maintain rates to intermediate points between said junctions higher than the rates from said junctions.

Fourth Section Order 4303 granted the Birmingham & Northwestern Railway permission to meet rates of the Illinois Central Railroad, and the Louisville & Nashville Railroad from Dyersburg and Bells, Tennessee, to Cairo, Illinois, on lumber via Jackson and Mobile & Ohio Railroad, and to maintain higher rates from intermediate points provided that the rates from said intermediate points did not exceed more than 3 cents per 100 pounds the rates concurrently in effect from Dyersburg and Bells, Tennessee.

Fourth Section Order 7026 granted the Birmingham & Northwestern Railway and the Gulf, Mobile & Northern Railway permission to meet the rates of their competitors at junction points on class and commodity rates to and from Baltimore and related points, Ohio and Mississippi River Crossings, and related points, and Southern Atlantic

and Gulf Ports and related points, and to maintain higher rates to their intermediate local points on basis of lowest combination provided that the components applicable between points on the complainants' lines used in making such combination should not be increased.

Fourth Section Order No. 8834 granted these lines authority to meet the rates established at the junction points and to charge higher rates at local or intermediate points.

In Memphis Freight Bureau Case, decided July 19th, 1913, reported in 27 I. C. C. 507, the Commission employed the following language:

"The Commission in Stiritz v. N. O. M. & C. R. R. Company, 22 I. C. C. 578, held that since this was a comparatively new line, poorly equipped, and lacking the density of traffic of the older competing lines, it was justified in charging higher rates." [fol. 509]

The Commission, in Fourth Section Violation of the Southeastern lines, reported in 30 I. C. C. 161, after reference to a revenue check made by interested carriers, pointed out that a strict application of the long and short-haul clause would result in a deficit to a number of lines, including these lines.

In 32 I. C. C. 79, the Commission made the following statement as to such short or weak lines:

"It is earnestly represented that these several short roads intersecting the main lines are not in a position to observe at their local stations the same scale of rates that is observed by their trunk line connections. The Commission has not had an opportunity to investigate the conditions existing on each of these several short roads. We are of the opinion that they should be authorized to continue to meet at their junction points the rates which are established at such points by their trunk line connections, and to continue for two years higher rates to intermediate local stations, provided that the present short roads and the rates of the trunk line junction points on which rates to said intermediate points are made are not increased."

More recently, in Docket 13449, reported in 85 I. C. C., the Commission, upon hearing and determination realized

the situation confronting petitioners' lines and granted certain special relief (Fourth Section Order 8843).

In I. & S. Docket 1885, pertaining to brick and clay products, the Commission authorized for application upon petitioners' lines rates a differential of 3 cents per 100 pounds higher than for trunk lines (Fourth Section Order 8895).

[fol. 510] Commissioner Eastman, in his tentative report, Southeastern Class Rate Investigation, Docket 13494, recommended special treatment for account of petitioners' lines, realizing financial conditions and among other things said:

"Certain financially weak carriers of fair size and numerous so-called short lines seek special treatment. The weak lines are these: Birmingham & Northwestern Railway; Gulf, Mobile & Northern Railroad.

"There seems no doubt but that most of these weak lines and short lines find it hard to keep the wolf from the door." (Tes. 680-684.)

The State Commissions of Alabama, Mississippi and Tennessee, have also in the past and do now recognize these lines as requiring special treatment and they have been, are permitted, and do now maintain higher intrastate rates than applicable over trunk lines. This is mentioned merely to illustrate that these lines, account of location, financial and physical conditions, traffic density, and nature of traffic, cannot afford to operate rates in effect on strong trunk lines.

Exhibit No. 238 is a comparative statement showing average miles operated, gross revenue per mile of road, gross expenses per mile of road, freight traffic density, net ton miles per mile of road, for the Gulf, Mobile & Northern Railroad, Alabama & Vicksburg Railway, Illinois Central Railroad, and New Orleans & Northeastern Railroad, for the period of 1910 to 1921, inclusive, and the same information for the Gulf, Mobile & Northern Railroad for 1922 and 1923. This exhibit further and clearly portrays the weakness of the Gulf, Mobile & Northern Railroad as compared with certain of its connections and competitors, and we believe will fully justify the Commission in granting the

authority to us to publish and maintain higher rates than strong trunk lines. It will be seen that the gross revenue [fol. 511] per mile of road on the Gulf, Mobile & Northern Railroad was substantially one-third of the gross revenue on the Alabama & Vicksburg Railroad and Illinois Central Railroad, and approximately one-fourth of that of the New Orleans & Northeastern Railroad and this is substantially true as to freight traffic density.

[fol. 511] Exhibit No. 239 is a statement showing condensed comparative income account for the years 1914 to 1924, inclusive. This statement shows a deficit for the years 1914, 1915, 1916, and 1919. While it is true that this statements shows a surplus for the years 1917, 1918, 1920, 1921, 1922, 1923 and 1924, this company has never paid a dividend, except a total of 7¼ per cent. on its preferred stock only.

There is at this time $22.75 per share due preferred stockholders in accumulated dividends. The preferred stock is an exchange for old New Orleans, Mobile & Chicago Railroad first mortgage bonds, so really the preferred stockholders are the former bond owners, who have received only the dividends mentioned. All surplus, except the inconsequential dividends mentioned, is put back into the property for necessary additions, betterments, locomotives, equipment, etc. Since this line came out of receivership January 1st, 1917, it has expended for additions, betterments and extensions approximately $6,708,573.90. There are no bonds outstanding against the property, therefore no interest of consequence charged to income. Thus the financial disability or difficulty is emphasized. This company's financial difficulty has been of long duration, having gone through two receiverships. While conditions for 1923 and 1924 were more favorable, enabling the property by efficient operation and economical management to pay a portion of its dividends under abnormal traffic conditions, business moving freely throughout the country as a whole, the fact remains that this property has a very heavy maintenance expense. To illustrate, in the next five years [fol. 512] contemplated maintenance of equipment and roadway expenditures are in amount $11,319,200.00, or $2,263,840.00 per year which is the lowest the management feels should be expended in the interest of efficient oper-

ation and economical management, that it may adequately serve the public dependent upon it. During the year 1924 our maintenance expenditures were approximately $1,963,-127.00, making a difference of $300,713.00 per year for the next five years, which must be raised from earnings.

Our Company filed returns with the Commission under the Recapture Clause of the Transportation Act of 1920; these returns have been filed for the last four months of 1920, for the years 1921, 1922, 1923, and will be filed for the year 1924. There is filed herewith as Exhibit No. 240 copy of the returns already filed and a copy of the returns that will be filed for the year 1924. These returns do not show that our Company earned the 5¾ return on investment permitted by the Transportation Act before recapture. The rate of return for four months 1920 was 5 per cent.; 1921, 4 per cent.; 1922, 3.2 per cent.; 1923, 3.4 per cent.; and 1924, 4.3 per cent.; or an average rate for this period of 2.4 per cent.

These returns were based on our investment as represented by the books of the Company. However, we have received our tentative valuation from the valuation section of the Commission, and this valuation based on 1914 prices properly equated in accordance with recent decisions of the Interstate Commerce Commission do not differ materially from our book figures. (Tes. 684-88.)

Cross-examination.

By Mr. Moore:

"Q. Mr. Gill, you do not show the proposed rates from Gulfport, Mississippi, or Mobile, Alabama, to stations on your line. Do you propose to apply from those points the Royster scale plus 50 cents per ton?

[fol. 513] "A. What you — asking to do, Mr. Moore, is to apply the scale that is adopted on fertilizer for trunk line application, plus 50 cents?"

That may be something higher or something else than the Royster Scale. Wherever I have used rates here, I have used the Royster scale.

I don't know what per cent. of our fertilizer traffic is intrastate. The intrastate must be greater, because of the proximity and the low rates we have. However, there is a very substantial movement, for example, from Nashville, Birmingham and Memphis to our stations. The intrastate movements are, as a rule, short distance movements.

I should judge our average would be less than 100 miles. These proposed rates would bring about some very material increases in our intrastate rates. In most cases it would bring about increases in our present rates, anyway, without the 50 cents that we propose in the interstate, as well as the intrastate.

During the past five years, there has been a very substantial increase in the net earnings of our road. We are not now approximating the 5¾ per cent. We have made improvements. We realize the necessity for further improvements. You will observe from my Exhibit 240 that we have filed in this record copies of the returns made to the Interstate Commerce Commission under the capitalization clause. The average of that, I believe—I can give you the average in just a second—the average for the period, 5 years, was 2.4 per cent.

Page 4, 1919, shows one-half of one per cent.

For 1923 it appears to be $1,302,000.00, and for 1924, $1,463,000.00. That shows a very substantial improvement over 1919, that is true. That shows a very substantial improvement. (Tes. 688-690.)

"Q. Now, then, Mr. Gill, referring to your statement about the disposition of the timber supply along your road. [fol. 514] In a hearing conducted in Mobile recently on your Fourth Section application, didn't you file an exhibit showing the per cent. of forest products reflected in your total tonnage for a period of something like 10 or 12 years?

A. I did; yes, sir; and the average was the figure that I mentioned at this particular hearing."

I don't know how much difference there was between the average of the first half of that period, and the average of the latter half of that period; it was very small, but I am not sure about it. There has been a very substantial increase in the movement of tonnage over your road, not only of forest products, but every other commodity. We would

like to see it continue, but there is no possibility of it continuing, that is why we are developing through traffic. Wherever there has been timber cut out and plants abandoned, in many cases new ones have not been established; for instance, I have in mind a place there at Rose, I do not know whether you know where it is, just north of Tate Springs, two tremendous plants that were in operation there, and there is nothing there today but skeletons. There is not anything shipped from there except a little waste wood that goes into these reduction plants. Despite the cutting out of the timber and abandonment of plants, our timber, forest products, continue to increase; they are cutting out now faster than they ever did. As to how the rates from, say New Orleans, to stations on our road on fertilizer are now divided: I have not the basis in my mind, even. We have various arrangements with our connections, that are based on certain reciprocal arrangements. I will say, for your information, however, that any relief accorded us in fertilizer rates is to accrue solely to us; if that is what you have in mind. If 50 cents per ton is allowed to our line over the rates that may be established by the Commission, that 50 cents will accrue to our line, and wherever rates today are accorded us we will get the relief. (Tes. 690-693.)

(Witness excused.)

[fol. 515] J. F. Dalton was thereupon duly sworn as a witness and testified as follows:

Direct examination:

(Statement:) My name is J. F. Dalton, and I am General Freight Agent of the Norfolk-Southern Railroad.

I have had about twenty off years' railroad experience, approximately sixteen of which has been with the traffic department of the Norfolk-Southern Railroad. Of the sixteen years connected with the Norfolk-Southern Railroad, I have been a general officer of the traffic department for approximately fourteen years.

The Norfolk-Southern Railroad's interest in this investigation lies very largely in the movement of fertilizers within the states of Virginia and North Carolina, both in-

trastate and interstate. Of the total mileage of the Norfolk-Southern Railroad, that is 932 miles, all of same is located within the state of North Carolina, with the exception of 115 miles, which is located in the State of Virginia, and which mileage is very largely made up of branch lines.

Mr. Menzies, I believe, in his testimony in dealing with the North Carolina, or the Carolina, rate situation, covered in a general way the history of the rate adjustment within the state of North Carolina, beginning with about 1891 up to the present time, as has been well covered by the Commission's report in the third Royster case, 50 I. C. C., the present rates, or rather the basic scale of rates, within that State, is a result of the findings of the special commission appointed by the governor in the early part of 1914, I think, to conduct an investigation dealing with the reasonableness of rates passed by an Act of the legislature of the [fol. 516] State of North Carolina. As a result of its extensive hearings and consideration the special commission made a report of its findings to the governor, and those findings were promulgated as the Justice freight rate scales, and which included fertilizers.

That scale promulgated by the governor became effective on October 13, 1914, and provided for a mileage scale, single- and joint-line, the latter being 20 cents per ton at that time higher than the single-line scale. This scale—or those scales, rather, were applicable to all trunk lines of 75 miles or more in length, and which included the lines of the Norfolk-Southern Railroad within the State of North Carolina. Under the law the State regulatory authorities of North Carolina could not assume jurisdiction in so far as lowering or raising the rates of the State of North Carolina until at the expiration of six months subsequent to the promulgation or the effectiveness of the rates. Soon after the State Corporation Commission assumed custody of the rate situation within the State of North Carolina, the Norfolk-Southern Railroad made representations to the governor of North Carolina—I should have said of the State Commission—that the rates were unreasonable and sought to increase the rates previously prescribed and known as the Justice scale. (Tes. 700-702.)

The same rates do not apply interstate. The rates interstate are those fixed by the Commission in the third Royster case, and in the second and third cases, certainly the third Royster case, the Norfolk-Southern Railroad attempted to prevail upon the Interstate Commerce Commission to grant it a scale of rates approximately ten per cent. higher than what the Commission fixed for the other three defendants in [fol. 517] the Royster case. However Commissioner Hall, in the third case, 50 I. C. C., called attention in his dissenting report to the inadequacy of the Commission in promulgating rates in the third Royster case while not fixing the differential adjustment for the lines of the Norfolk-Southern.

I have referred to interstate, having in mind the rates from Norfolk into North Carolina, and which scale also now applies interstate within the State of North Carolina, and from Charleston, South Carolina into the State of North Carolina. Our intra-state rates now are higher than our interstate rates. They are for distances, single-line for 95 miles, and under, and for joint-hauls all distances higher.

With the permission of the Commissioner at this point I would like to introduce a series of exhibits, which I have prepared, dealing with the issues in this case. The first exhibit has been numbered 241, which I understand was the next number following the close of the hearing in Atlanta in April. 241 to 276 inclusive.

(There being no objection, the documents referred to were thereupon received in evidence, and marked "Respondents' Exhibits 241 to 276, inclusive, witness Dalton.")

The exhibit 241 is a map outlining the territory served by the Norfolk-Southern Railroad. On this map I have indicated by a reference mark star the location of fertilizer plants of one description or another on the lines of the Norfolk-Southern Railroad. It will be observed that the plants are in a number of cases a very short distance apart.

The exhibit 242 is a statement showing the points as well [fol. 518] as the character of fertilizer plants located on the lines of the Norfolk-Southern Railroad.

Exhibit 243 is a statement of the present rates on fertilizer carload single-line application as now effective be-

tween points in North Carolina intrastate as well as between points in Virginia intrastate, and also the scale as effective interstate between points in North Carolina or Virginia, or vice versa. However that scale does not apply to or from Norfolk, Virginia, because the Royster scale as prescribed by the Commission is applicable from that point. It would, however, apply from a point such as Elizabeth City or Hertford, North Carolina, located immediately south of the Virginia-North Carolina state line, on a shipment destined to a point in Virginia. (Tes. 702-705.)

That scale was not prescribed by the Commission, and it is very proper to state that the movement under that scale is not very great. However, it would apply on such shipments as might be handled from those North Carolina factories to points on our line in Virginia. The scale would not apply from Suffolk. There are specific rates from Suffolk, Virginia, to destinations on the line of the Norfolk-Southern Railroad, which, for some distance, I think up to about 90 or 100 miles, where the rates exceed the Royster scale, applicable from Norfolk, and for distances over 90 miles, my recollection is that the scale is about the same as the Royster scale.

The exhibit 244 is a comparison of the rates intrastate in North Carolina as effective prior to the Justice scale, viz. October 13, 1914, which scale has been plussed the two gen- [fol. 519] eral increases and minused the ten per cent. reduction, as contrasted with the proposed scale for single-line application of the Norfolk-Southern Railroad.

That is different from the scale which the other carriers are proposing. That scale is universally ten per cent. higher than the scale proposed by the other trunk lines. It will be noted that in some cases the old scale as shown in the first column of the exhibit 244, which was in effect from 1891 to 1914, plus these increases, and ten per cent. reduction, in some cases, is the same, and in others under, and still in other cases over the scale which we are proposing.

Exhibit 245 is the old North Carolina intrastate scale effective prior to the Justice scale plus the two general increases and the ten per cent. reduction, as compared with the present North Carolina intrastate joint scale, and the proposed joint scale of the Norfolk-Southern. There it will be noted that the old scales, or rather the old basis, shown

under column A, which, prior to October 13, 1914, was the local mileage scale of each line, subject to 25 per cent. statutory deduction of the State. In other words, there were no joint-line mileage scales, but the local scale of each line less 25 per cent. was used in making joint-haul rates between trunk lines 75 miles or more in length. That basis is contrasted with the existing joint scale and that which we are proposing in this case for joint-haul application.

Exhibit 246 is excerpts from transcript of testimony in I. C. C. Docket 7573, which I believe is the third Royster case, 50 I. C. C. Mr. Calloway, as referred to in this exhibit, was the attorney for the lines defendant to the case other [fol. 520] than the Norfolk Southern. Mr. Womble, as mentioned in the exhibit, is the rate expert of the North Carolina Commission, and Mr. Travis at that time was Chairman of the North Carolina State Corporation Commission.

Exhibit 247 is a copy of rate authority No. 1233 of April 12, 1921, of the Virginia State Corporation Commission dealing with the intrastate rates of the Norfolk Southern Railroad. It will there be observed that the Virginia Commission authorized, after publication of newspaper notices, but without a public hearing, a scale of rates for the Norfolk Southern Railroad generally higher than the scale now proposed for single-line application over the lines of the Norfolk Southern. We are proposing that scale for both intrastate and interstate application; provided we can secure that scale, it our purpose to apply it universally. As has already been stated all lines of the Norfolk Southern are located in the States of Virginia and North Carolina, and the two State Commissions have authorized the Norfolk Southern Railroad to charge generally a higher level of rates than the Royster scale. In the traffic test which the carriers have been making, we used our proposed scale; I have an exhibit which I will deal with later touching upon that.

Exhibit 248 is a comparison of the present joint-haul scales between points in North Carolina and the proposed joint-haul scales of the Norfolk Southern Railroad. The joint-haul scale was made as much higher than the proposed single-line scale of the Norfolk Southern as the Royster joint-line scale is higher than the Royster single-line scale.

Exhibit 249 is a comparison of the present rates of the Norfolk-Southern intrastate North Carolina single-line [fol. 521] with the proposed joint scale.

Exhibit 250 is a statement showing the proposed rates of the Norfolk-Southern Railroad as contrasted with the 6th class rates from Norfolk, Virginia, to North Carolina points for corresponding distances, and the percentage which the proposed rates bear to the Sixth class rates from Norfolk, Virginia, to the destinations indicated in the exhibit.

The Southern Railway provides for Sixth class rate on fertilizers in the absence of specific commodity rates. The exhibit shows that the rates in many cases are as low as 39 per cent—that is the proposed commodity rates are as low as 39 per cent. of the going Sixth class rates. (Tes. 705-708.)

As to how we arrive at our joint scale: after making the single-line scale ten per cent. higher than the Royster single-line scale, I then found the difference existing in the present Royster single-line and Royster joint scale, and added that difference to our proposed single-line scale.

Exhibit 251 is similar to Exhibit 250, except it deals with the intrastate rates in Virginia.

And exhibit 252 is the same as exhibit 250, except that it compares the North Carolina intrastate sixth class rates with the proposed rates on fertilizer, and shows the percentage of such proposed rates to the existing sixth class rates.

Exhibit 253 is a comparison of the rates as effective from Norfolk, Virginia, to stations on the Chesapeake & Ohio Railway as compared with the proposed Norfolk-Southern scale.

[fol. 522] The exhibit shows both the C. & O. intrastate and interstate scales.

Exhibit 254 is a comparison of the proposed Norfolk-Southern single-line scale with the rates from Norfolk, Virginia, to stations on the Pennsylvania Railroad, and single-line haul, both interstate and intrastate.

In connection with that exhibit it will develop upon investigation that in January, February, and March the Pennsylvania Railroad handled to local stations on its line between 2700 and 2800 cars of fertilizer, and that the bulk of same moved from Norfolk, Virginia, Baltimore, Mary-

land, Salisbury, Maryland, Princess Anne and Crisfield, Maryland, and some from Eastern cities.

Exhibit 255 is a comparison of the rates between Pennsylvania Railroad Stations, N. Y. S. & N. division, both intrastate and interstate, compared with the scales as proposed by the Norfolk-Southern.

Exhibit 256 is a comparison of the rates proposed by the Norfolk-Southern with the rates from Baltimore, Maryland, to stations on the Pennsylvania Railroad, both representing single-line hauls. Baltimore, as is well known, is a very large and important shipping point for fertilizer. That exhibit consists of two pages.

Exhibit 257 is similar to 256, except it makes the comparison with the rates on fertilizer from Baltimore and to stations on the Baltimore & Ohio.

Exhibit 258 is similar to 256, except it makes the comparison with the rates from Baltimore to stations on the Western Maryland.

[fol. 523] Exhibit 259 is a comparison of the proposed rates with those applicable for single-line application between stations on the New York, New Haven & Hartford Railroad. My investigation with the New Haven road developed that there is some movement under the rates of the New Haven road, but we were unable to get any statistics as to the volume of it.

Exhibit 260 is a comparison of the Norfolk-Southern's proposed scale with that applicable in C. F. A. territory under the three different zone basis.

In our study of this case we have been anxious to develop as far as possible the causes which influenced and determined the consumption of fertilizers within the states of Virginia and North Carolina, and in order to arrive at some definite idea and secure some complete and full information of a positive character as near as possible, we sought to obtain same from the United States Department of Agriculture, as well as the Department of Agriculture and Immigration of Virginia, and the North Carolina Department of Agriculture.

Exhibit 261 contains letters from the United States Department of Agriculture, Bureau of Soils, expressing views as to the causes which lead to the consumption of fertilizer; the original of that letter I believe is attached to the set of

exhibits handed to the Commissioner. This exhibit also contains a letter from Commissioner Koiner of the Department of Agriculture and Immigration of Virginia, and also letter from the North Carolina Department of Agriculture.

After securing that information we undertook to develop information relating to the acreage, production, and market values as well as the consumption of fertilizer, and we were forced to reach the conclusion that there is quite a [fol. 524] cor-elation between farm values and production crops and the consumption of fertilizer.

As is well known the chief industries of North Carolina, I think, *is* cotton and tobacco, and in Virginia, *and in Virginia*, possibly tobacco. There is not as much cotton grown in the State of Virginia, in fact not anything like as much as is produced in the State of North Carolina.

On this exhibit I have also indicated the freight rates as in effect during the months of March and April of the years indicated for certain representative distances.

Exhibit 262 shows the acreage, production, and the farm price as of December 1st, cotton and tobacco, for the State of Virginia. (Tes. 708-712.)

Exhibit 263 shows separately the same information as to cotton and late tobacco for the State of North Carolina.

Exhibit 264 is a statement separately of Virginia and North Carolina of cotton, showing the acreage, production, consumption of fertilizer, and the rates on fertilizer for representative distances.

The purpose of these exhibits is to show that there is a very close relation in the farm values of cotton and tobacco and the consumption of fertilizer. For example, it will be noted that, taking the state of North Carolina as shown on Exhibit 264, that the farm price of cotton December 1, 1919, was 35.2 per pound, which was materially higher than the price of cotton for any previous year. As a result of that the year of 1920 there was a material increase in the consumption of fertilizer. The price obtained from cotton, or rather the price on the farm of December 1, 1920, and dur- [fol. 525] ing that period had a bumper crop, the price of cotton tumbled from 35.2 in 1919 to 14.5 per pound in 1920. The following year, 1921, the price of cotton was somewhat better than in 1920, but the movement of fertilizer which took place in the spring was materially less, having dropped

in 1920 from 1,221,796 tons to 695,000. Now, in 1921 the price was better than 1920, and there developed an increase in the fertilizer consumption of 1922. Going a step further it will be observed from the same exhibit that in the year of 1922 the price of cotton was 24.5 per pound as compared with the previous year of 16.4, so there again it appears that the fertilizer consumption went from 936,000 tons in 1922—the fertilizer consumption in 1922—went from 936,000 tons, in round figures, to 1,081,000 in 1923. What I am trying to prove by these exhibits in other words, is what the Department of Agriculture of North Carolina told us in one sentence—that when the farmers are hard up they buy little, and when they are prosperous they buy liberally, and that their prosperity and liberality seems to depend very largely upon the prices obtained for these chief crops.

"By Mr. Roberts:

"Q. That don't fit as far as Virginia is concerned in 1923 and 1922, does it?

"A. Probably be a little better on tobacco in Virginia, which is the principal crop, more so than cotton is in Virginia."

The consumption of fertilizer does not depend upon the particular acreage. That fertilizer consumption means a total consumption for the state as used on all crops. I think it is generally recognized that cotton and tobacco are the chief crops, or the chief industry of the State, and in Virginia, I suppose from an agricultural standpoint, that tobacco is. There is materially less cotton grown in Vir-[fol. 526] ginia than tobacco, however the fertilizer consumption is that consumption for all kinds of crops, and not necessarily cotton and tobacco. However, it does not show that with the trend of the farm prices, that the consumption has generally gone along with it. This acreage, though, does refer to the acreage, but not the consumption of fertilizer, which is the total consumption of the State.

Exhibit 265 is a similar statement, showing separately by states the same information as to leaf tobacco.

Exhibit 266 is a statement separately by states, showing the combined acreage of cotton and leaf tobacco. That is, taking the total acreage of cotton and tobacco in Virginia and combining them.

Exhibit 267 is statement of combined cotton and leaf tobacco for the states of Virginia and North Carolina; the farm price, the production, and the freight rates for representative distances in North Carolina and Virginia intrastate, and also from Norfolk to various points in North Carolina for representative hauls.

Now Exhibit 268 is a similar statement to 264, except that it deals with the acreage and production of hay for the states of Virginia and North Carolina separately.

Exhibit 269 is a similar statement for corn.

It will be noted that from exhibits 268 and 269 that the consumption generally of fertilizer followed more nearly the trend of the prices of cotton and tobacco than it did corn and hay.

Exhibit 270 is a statement showing the movement of fertilizer locally between stations where the entire transportation took place on the line of the Norfolk Southern for the [fol. 527] months of March and April, 1925. Those months, based upon 1924, represented about 58 per cent. of the total fertilizer movement for the year 1924. That is, that the fertilizer for cotton and tobacco generally takes place during the early part of the year, and that has a great deal to do with the tonnage handled. Now we have taken the abstracts covering each carload shipment, and rerated it on basis of our proposed single-line scale, and it shows an increase in revenue of 2.56. Now it will be recalled that we are proposing a scale ten per cent. higher than the single-line Royster scale, but the reason why this increase in revenue is not as much as ten per cent. is due to the fact, as has already been indicated, that within the State of North Carolina we have generally scales of rates that are higher than the Royster scale, on the Norfolk Southern.

In other words for single-line application for 95 miles and under our present scale is higher than the Royster single-line scale, and at 100 miles our present scale single-line is the same as the Royster single-line scale. About 90 per cent. of the 1937 cars of this total of 2124 shown on this exhibit moved for distances 95 miles and under. The average haul is approximately 38 miles, and by reference to exhibit 241 it will be observed there that the lines of the Norfolk Southern Railroad have quite a number of fertilizer establishments on them. (Tes. 712-716.)

Now exhibit 271 is a statement showing the movement of fertilizer segregated by the three different groups as outlined in connection with the general traffic test, separated as between North Carolina intrastate, North Carolina interstate, and North Carolina interterritorially. That [fol. 528] covers shipments coming from points north of the Ohio River or west of the Mississippi and moving via Atlanta or Paint Rock gateways, or the Virginia Cities, rerated on the basis of the Royster scale. The movement, however, is infinitessimally small. It also shows the movement in connection with the short lines intrastate and interstate. It might be said, that in so far as this interstate movement is concerned, that it is generally a movement from Norfolk, Virginia. You will recall, Mr. Commissioner, that in one of the Royster cases, that reference was made to the fact that a very substantial and large volume of the fertilizer produced at that point was shipped into the state of North Carolina. Now the statement, however, reflects tonnage where the Norfolk Southern Railroad is the delivering carrier, as well as, of course, its local traffic, but I have separated from the previous exhibit the local traffic. The percentage increase under the proposal of the Norfolk Southern is 5.9.

I would like to say this, that I have made some further analysis as to the distribution of the total fertilizer movement of the Norfolk Southern Railroad for the months of March and April, 1925, and I find that 61.2 per cent. of the total tonnage represented North Carolina intrastate movements, and in Virginia intrastate 2.03 per cent., and interstate, including the movement from the Ohio River and Mississippi River crossings 36.77, making a grand total of 100 per cent. Of the 61.2 per cent. represented in the North Carolina intrastate tonnage, a large part of it, or rather it includes 27.79 of the total of all tonnage as single line movement. Now of that total 100 per cent. of all tonnage, 27.79 single line movement, 90 per cent. or approximately 24 per cent. of the total movement moved for distances single line 95 miles and under.

[fol. 529] Exhibit 272 is a comparison of operating income, accounting traffic statistics Class I Railroads, Southern Region, for the years 1922 and 1923, as compared with the Norfolk Southern Railroad for the same years. Now

the years 1922 and 1923 were taken, Mr. Commissioner, because we had this data already prepared previously in connection with another case when this fertilizer investigation was started. When later statistics, however, are desired, of course we will be glad to supply them.

Exhibit 273 is a statement showing the results of operation of the Norfolk Southern Railroad for the years 1920 to 1924 inclusive, which shows the average performance including the rate of return for the five years. It will be noted that the rate of return as shown in this exhibit is 2.24. However, as you know, Mr. Commissioner, the Commission, I believe has fixed the valuation of the Norfolk-Southern Railroad lines as of June 30, 1914, and applying the standards of the Bureau of Labor of the Commission, would bring the valuation for rate making purposes in excess of that shown in this exhibit. Valuation Docket No. 31.

"Q. What do you mean by applying the standards of the Bureau of Labor of the Commission?

"A. Well, perhaps I can better explain that, if you will permit me to read just a paragraph from our Chief Engineer's letter to me bearing on that exhibit.

"Q. What you mean, you have equated that value for the increase in wages and materials?

"A. That is it, materials and labor."

[fol. 530] I didn't mean to intimate at all that the Commission had yet decided that that was the proper thing to be done. That the Commission had recognized that as a going thing, but which seems to be the opinion of our Chief Engineer from his dealing with the valuation proposition, that it is a sound thing to do. I don't mean to say that the Commission has approved it in that form.

Now Exhibit 274 is a comparison of the present rates of the Carolina Railroad, and the Kinston Carolina Railroad, as compared with the rates of the Dover & Southbound Railroad, and some short lines operating in the same general territory; and further, a comparison of the existing Carolina, and Kinston Carolina rates with fifty per cent. higher than the Royster scale. The North Carolina Corporation Commission after receipt of application and consideration, fixed the rates on these two short line railroads approximately fifty per cent. higher than the Royster scale, and

fifty per cent. higher than the Royster scale is now proposed for these short lines. In fact there is so little different—I haven't worked it out to see which way it goes—between fifty per cent. higher basis over the Royster scale, and the present rates, that these lines would be content, I think, with the existing scale. I represent those lines. We don't so regard them as being operated as a part and parcel of the Norfolk Southern Railroad for the purposes of Section 15 (a) of the Act. These lines are so poor that they are not even able to employ a traffic representative. I happen to perform the functions for those lines. (Tes. 716-720.)

The stock is owned by the Norfolk Southern Railroad. They were practically abandoned at one time, and the Norfolk Southern Railroad has been operating them more or [fol. 531] less as a public benefactor, but for the purposes of 15 (a) of the transportation Act these lines have not been treated as a part of the Norfolk Southern system, but as separate entities altogether.

It shows on this map here, the line of Pink Hill, and Snow Hill. That is the Carolina line out to Snow Hill, and the Kinston & Carolina to Pink Hill. However, there are other maps that we have got that show them entirely foreign, in as much so as the Southern or Coast Line is to the Norfolk Southern.

Exhibit 275 is a statement of the operations of the Carolina Railroad for the years 1922, 1923, and 1924. In 1924 there was a deficit of $416.72.

Exhibit 276 is a comparison of the operations of the Kinston Carolina for the years 1922, 1923, and 1924, and which for all three years showed a deficit.

In connection with the general freedom of movement of the fertilizer traffic, the records of the Norfolk Southern Railroad show that for the period of January 1st to August 31st, inclusive, 1925, the Norfolk Southern handled 12,403 cars loaded with fertilizer, and in 1924 for the same period 10,983 cars loaded with fertilizer, or an increase in round figures of 13 per cent. of 1925 over the period mentioned of 1924. Taking the entire calendar year of 1924 the Norfolk Southern handled 11,689 cars, whereas for the period of eight months mentioned in 1925 it handled 12,403 cars of fertilizer.

I am unable to give you the average loading of the cars for 1925, but taking the total cars handled in 1924, and the [fol. 532] total fertilizer tonnage, and which embraces carload as well as L. C. L., the average loading was about 19 tons per car, and that, applied to your 1925 movement, assuming that the average loading will be the same for 1925 as 1924, there will be an increase in the fertilizer tonnage of 1925 in North Carolina. Taking the years of 1920 to 1924, inclusive, the average revenue per annum from fertilizer traffic as earned by the Norfolk Southern is $392,855.00 or approximately in round figures $400,000.00. So, if you reduce the rates of the Norfolk Southern Railroad on fertilizer ten per cent., that is $40,000.00, or twenty per cent, $80,000.00, without any compensating gains or ways to recoup that loss to the Norfolk Southern Railroad. It is operating in a territory where the records show that there has been and is a substantial movement from year to year, and the fact that in other territories there may have existed lower rates, and which has not accrued to the advantage of the carrier, but my mind would not be a very proper way to say that the level of the rates in the Carolinas should come down. Our information as to the fertilizer traffic to the Carolinas shows that there is certainly freedom of movement. If you undertake on a weighted average of the territory of the South as a whole, to fix the rates in the Carolinas in my judgment that is not going to help to increase the flow of the fertilizer traffic in the Carolinas, but were it possible for any human body to fix the price, the market values of the basic crops, that one thing would be a great boon to the fertilizer consumption. I wanted to make clear to you that the Norfolk Southern has no way of recouping any loss on fertilizer in the Carolinas that may flow from any average of rates or weighted revenue statistics, taking the South as a whole, so it seems to me that what we are proposing here [fol. 533] of a ten per cent. higher than the basic scale, and which scale moves a very large volume of fertilizer, does not seem an unreasonable proposition. The transportation machine of the Norfolk Southern Railroad is of certainly some concern and some value to the communities which it serves. The Norfolk Southern Railroad certainly would not be in the position, or certainly it would not be calculated to increase and bring about improved service

with any depletion of its net income, especially in view of the showing which it is now, or has made since the termination of Federal control.

As to whether our rates are influenced in anyway by competition with the other railroads: I am glad you mentioned that. I wanted to say that they are influenced and controlled in so far as there is direct rail competition between the lines or routes of the Norfolk Southern versus the lines or routes of other carriers. For example, assuming that the Norfolk Southern Railroad obtained a ten per cent. higher scale than the Royster scale from Norfolk to Wilson, North Carolina, or to Raleigh, North Carolina, or to Goldsboro, and even Charlotte, it still then would be required to meet whatever scale of rates that you fixed for the other lines. Now aside from being controlled by that direct rail transportation there is such a thing as "cross-country" competition, and that seems to prevail to a considerable degree in the handling of fertilizer, that being one commodity that the farmer will handle by motor truck or by horse and wagon.

I recall in that connection a movement of fertilizer to Kinston, North Carolina, from Norfolk, where the farmer sent out to that point and drayed it for a distance of about [fol. 534] 12 or 15 miles to various localities in Green County, Snow Hill, which I believe is the county seat. And I recall also in that connection the cross-country competition existing in the movement of fertilizer to a station known as Murray, North Carolina versus Snow Hill where fertilizer shipped to Murray, North Carolina, and then carted over to Snow Hill. (Tes. 720-724.)

[fol. 535] Why we have been somewhat in doubt as to asking for a higher basis than ten per cent. over the other lines for these reasons, that the two state commissions have recognized generally the ten per cent. basis. Now I believe that we could possibly, considering your cross-country competition, charge maybe more than ten per cent., but we were faced with this situation of the State commission to regulate the charges on a very substantial part of our traffic, having conceded the propriety and fixed the policy of giving us that level of rates, we felt that in this proceeding the safe thing to do was to propose it also interstate.

"Q. Could you use the ten per cent. scale without Fourth Section relief at competitive points?

"A. Without Fourth Section Relief. That is correct. And of course, Mr. Commissioner, we would desire Fourth Section relief so as to meet the rates at the competitive points.

"Q. That is what I meant."

Mr. Beeman, the Secretary of the Eastern Carolina Wholesale Dealers and Manufacturers Association had intended to testify at the April Atlanta hearing respecting the attitude of his association, bearing on the proposal of the Norfolk-Southern. He is not here, and in fact I understand Mr. Beeman is now in Florida, but with your permission I would like to read about three paragraphs of a letter from Mr. Beeman addressed to Mr. Loyal our President under date of April 15, 1925.

This communication is from the Secretary-Traffic Manager of the Eastern Carolina Wholesale Dealers and Manufacturers Association, dated Wilson, North Carolina, April 15, 1925, addressed to Mr. George L. Loyal, President of the Norfolk-Southern Railroad, Norfolk, Virginia. I don't know where their factories are located. They have a membership consisting of wholesale dealers and manufacturers of the State—that is the eastern part of North Carolina. I notice here, Mr. Bosley that Mr. Ed Meritas (?) of New-
[fol. 536] bern, North Carolina, that operate as you possibly know a fertilizer factory at Newbern is on the transportation committee.

"Com. Eastman: Do you object to this letter Mr. Bosley?

"Mr. Bosley: Mr. Commissioner, I don't think that letter is competent or proper here. We have no chance to cross-examine.

"Com. Eastman: Well, you object, do you?

"Mr. Bosley: Yes, sir.

"Com. Eastman: Your objection is sustained."

I have made some investigation, Mr. Commissioner as to the necessity of inspecting equipment once loaded with fertilizer traffic before being utilized again for the loading of merchandise traffic, and our agent at Norfolk advises me that it is quite frequently the case that empty cars are

placed in Berkley slips for loading with merchandise, crude stuff, etc., that have previously been loaded with fertilizer, and even though the car is thoroughly swept out and cleaned, the odor is so offensive that the car cannot be used in merchandise slips, and it is necessary to throw the same out and request other cars from the yard department. Our experience has been that it requires some time for these cars to be sufficiently aired after the same have been loaded with some brands of fertilizer, or fish scrap, before the same can be again placed in merchandise service.

I also made some investigation of this particular situation with our superintendent of transportation, and in doing so his experience had been somewhat similar to that of our Norfolk agency. Perhaps a little more extensive, because he called attention to a claim of approximately $1,400.00 for damage to a carload of sugar. The car was loaded with Peruvian guano on March 3rd, and relieved of such load on March 11th, it being under load eight days. The car passed inspection for merchandise loading on March 23rd, and was [fol. 537] on that day, 12 days after being relieved from the guano load, loaded with sugar. The car was free from odor or residue. On arrival of the sugar at destination, only four days in transit, the sugar was so saturated with fertilizer odor that it was unfit for human consumption, and the net result was that the sugar had to be returned to the sugar refinery for working through the refinery process. It shows further that this is a concrete example of what confronts the car equipment situation at the fertilizer season, as a result of the commodity contaminating cars, making them unfit for the time being of many other commodities. Now, if it is deemed necessary I will be glad to have Mr. Dugan, our superintendent of transportation, come here to testify more specifically on the experience of our operating people in using cars for merchandise traffic that were previously loaded with fertilizer. (Tes. 724-27.)

"The Witness: I shall be very happy, Mr. Commissioner, to have Mr. Dugan's testimony along that line, or whatever lines he wishes to along this particular phase of the matter, and I am wondering that if it would be in order as a matter of convenience to Mr. Dugan, to let him testify just previous to the carriers' rebuttal.

"Com. Eastman: Yes, I think that could be done. I suggest that you take this up with counsel for the other lines and perhaps the whole question of the contamination of cars will be covered by one or two witnesses. You did have a witness on that subject Mr. Gwathmey at the previous hearing." (Tes. 728-9.)

I overlooked when introducing the exhibits to file another exhibit which I had prepared yesterday and was numbered 247½, and with your permission I will now offer that in evidence.

(The statement referred to was thereupon received in evidence and marked "Respondents' Exhibit No. 247½, Witness Dalton.")

[fol. 538] Exhibit 247½ shows the comparison of the rates as in effect in North Carolina from 1891 to 1914 with the various Royster scales, and the North Carolina legislative scale, and the proposed scale of the Norfolk-Southern for single-line application. The rates as shown under column A have all been plussed the increases, and minused the ten per cent. reduction so as to bring them down to the level of the existing rates had they remained in effect.

"Q. The 'Justice Scale' was that so named because of its character, or was it named for an individual?

"A. Well frankly I always thought it was a misnomer. It was named after the representative as I recall that introduced the bill in the legislature." (Tes. 729-730.)

Cross-examination:

As to the practice of the Norfolk-Southern Railroad to properly clean cars that are tendered to shippers after loading fertilizer, for loading as merchandise cars: Why, it is my understanding that as to the loading of box-car equipment for merchandise traffic where it is loaded by the Norfolk-Southern Railroad, or with any character of traffic that is susceptible of damage from the odor, that the cars are cleaned by the Norfolk-Southern Railroad. Now as to a car tendered to a shipper for loading on his private siding, I am not positive what the practice is, but Mr. Dugan

will also touch upon that phase of it. On Exhibit 270, I show the average weight per car 46,109 pounds. That average includes materials; everything that took the fertilizer rate. It includes fertilizer materials that moved at lower than the fertilizer rate too. This average haul of 38 miles is on intrastate traffic. That includes materials as well as complete fertilizer. I testified that our average load per car including less-carload shipments was 19 tons; that means all fertilizer that we handled. All fertilizer that moved, less-carload as well as carload, 19 tons.

[fol. 539] On Exhibit 271, I show the present and proposed revenues on state and interstate movements of vegetables cake meal and hulls on cars which moved over our line to destinations on our line. The proposed revenue is based on our proposed fertilizer scale.

Exhibit 242 refers to 30 dry-mixing plants located on our line. I have no information regarding the materials used by these dry-mixers in preparing their fertilizers. That is a result of the investigation which we conducted through our agencies located at the points where the plants are located, and based upon the information which such plants in turn gave to our agent located at the point where the plants are located. I don't know from my general knowledge that some of those dry-mixing plants use cotton-seed meal in some instances in preparing their fertilizers; I cannot say one way or the other.

It seems to be the impression of our operating department, that a car loaded with fertilizer, irrespective of its brand, must undergo this certain kind of inspection. Now, unless that is done — is apt to bring about a greater degree of damage to other freight than now exists, and which is avoided by this inspection system which is now in effect. I referred to commercial fertilizers. Well inspection is done, whether it is material, or complete commercial fertilizer. Cottonseed meal as you well know is used both for feed and also by fertilizer plants.

"Q. Then would you say that in transporting cottonseed meal, when used for an ingredient of feed, would not contaminate the car?

"A. I could not say definitely." (Tes. 730-734.)

I don't know whether cottonseed meal may or may not contaminate a car.

The question of the supposed damage to the car is by [fol. 540] reason of some possible odor. There are lots of other articles besides fertilizer that have odors.

"Q. You haven't commented on those have you?

"A. No, I cannot recall any, but I expect there are."

By Mr. Young:

Mr. Dalton, you made comment in connection with certain exhibits showing the relation of prices of the previous fall crop to the consumption in the following year or spring, the way in which consumption was affected by the prices. Do you feel that the carriers should have increased rates on fertilizer in your case asking ten per cent. above that which was asked by the trunk lines, and expect the farmer to carry the full amount of the gamble as to what the prices will be that he will get for his product. In other words, through the increase in the freight rates, because the farmer would have to carry that much additional investment, and any speculation as to what he will be able to procure for his products?

"A. Why, I think it is a fair proposition, Mr. Young."

I think it exists in numerous cases that empty cars have to be supplied to these various fertilizer plants to take care of the outbound movement. I could not say if that transportation conditions does exist in regard to the movement of cottonseed meal, but based upon the experience of our operating department, that it hardly would exist as to cottonseed meal. This situation that you mention occurs more generally in the early part of the year where fertilizer is moved as was the case the last season in a short space of time, and the general flow of the inbound traffic was not sufficient as to create a supply of empties for the outbound movement of fertilizer from that point.

I could not say that the cottonseed oil mills have a greater receipt of loaded cars than they have in shipment of outbound cars in season, having in mind the large cottonseed movement to the mills; that may be true.

[fol. 541] I recall that during the last year particularly at Norfolk we had to bring in the empty trains, that is trains with empty cars, northbound for equipment to take care of the southbound movement of fertilizer from Norfolk. I really could not say how often we did that, but Mr. Dugan, our superintendent of transportation who will testify regarding this fertilizer odor, will be in a position to give more detailed and comprehensive information bearing upon that point.

I realize, of course, that most of the fertilizer plants at Norfolk are on the belt line. Of the movement of fertilizer from Norfolk, I think it is a safe assertion that no less than 90 per cent. of it comes from the belt line. I am speaking more particularly now of the fertilizer movement from Norfolk. That is a safe assertion, that of the total movement from Norfolk not less than 90 per cent. of it comes over the belt line, possibly 95, and I also know that we do run trains loaded with empty cars and did this past season to Norfolk to bring empties for the loading of outbound fertilizer from Norfolk. Now, as to whether or not all of those cars which we brought from the South northbound to Norfolk went to the belt line, or what part of them, I could not say.

I could not say what portion of the cars that are used for fertilizer loaded at belt line plants are made empty by the belt. I imagine that there would be quite a number of cars going to industries on the belt line with a load, that we would secure a supply of equipment for the outbound loading of fertilizer. I have made no investigation concerning materials during the fertilizer shipping season the fertilizer industries are taking in.

We have a great deal of lumber, cotton, and tobacco into Norfolk; particularly cotton and tobacco, not so much lumber.

"By Mr. McGehee:

"Q. Not quite so much tobacco, at the present time? [fol. 542] "A. No, tobacco at Newport News, principally."

We have a plant on our line, Mr. Dashiell, that stores about 18,000 hogsheads of tobacco. (Tes. 734-738.)

As to what we do with the cars that are made empty from lumber loading, and cotton loading, and from tobacco loading: I think the cars that come in with tobacco and cotton generally come in from September 1st onward until say March or April, that is the heavy movement. Tobacco is a commodity that moves very nearly all the year round. The season for your South Carolina tobacco opens in July, and North Carolina I think it is August. Now there is, as you say, the Imperial Tobacco Company that has an 18,000 hogshead storage plant on our line, and aside from that some movement of tobacco, but those cars made empty as a result of those inbound loads come generally at the season of the year when the fertilizer movement is not the heaviest and the demand the greatest for equipment. The heaviest movement is in March and April. That is with the Norfolk Southern system as a whole. As I said, approximately 58 per cent. of the fertilizer traffic handled by the Norfolk Southern Railroad takes place, or did in 1924, during the months of March and April.

Our tobacco movement is not over at the end of March, but it is not as brisk, generally.

We have steamers up there pretty nearly all the year around—steamers for export and coast-wise. Why of course there are steamers that come to the port of Norfolk the year 'round, but my recent investigation of the tobacco situation, as I recall it in connection with I. & S. Docket 2386, showed that the bulk of the movement or the brisk movement took place generally about November and December. There is a considerable fertilizer movement from Norfolk from January 1st to March 31st. There is a considerable movement during the months of January and February, but of course it is not anything like as [fol. 543] great a movement as that which takes place during the months of March and April, because, as I have said, our investigation showed that for the months of March and April, that approximately 58 per cent. of the total fertilizer tonnage moved during those two months.

Lumber, as you know, is a rather irregular thing at this time, and has been for the past several years. Ordinarily with the opening of the spring season along the North Atlantic coast it created a demand for lumber, and therefore the movement in volume was generally increased during

the early part of the year, so as to be on hand for the job of construction during the spring season, which I believe is recognized as a building or construction operation period.

"Q. Well now, your lumber and cotton — tobacco shipments originate at the same points to which fertilizer moves from Norfolk does not it? The same cars that move fertilizer from Norfolk to points in North Carolina would be available and are available in fact for this return movement of cotton, tobacco and lumber; isn't that a fact?

"A. Oh, to an extent that exists, yes, but as I have pointed out, that your movement of tobacco, for example into Norfolk, and your cotton too, does not create a sufficiently even flow of north and south-bound movements so that your loaded equipment on tobacco gives you an adequate supply for your fertilizer, particularly during the rush season, and as a consequence we must run empty equipment northbound to take care of this fertilizer traffic, particularly during the months of March and April."

With the cars that come into Norfolk loaded with the commodities that we mentioned, together with the cars that are made empty at the fertilizer plants, bringing in fertilizer materials, I would not think that a very considerable part of the car supply is solved in that way.
[fol. 544] I haven't investigated that feature, but just upon general knowledge I would not think so. It contributed naturally to some degree, Mr. Dashiell, but not to any great extent, I don't think. I haven't made any investigation of it. (Tes. 738-741.)

(Witness excused.)

JOHN A. STRZYZE was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

I am connected with the American Shortline Railway Association as traffic manager. I appear on behalf of members of the association, short line railroads in the South.

(Certain statements were thereupon received in evidence and marked "Respondents' Exhibits Nos. 277 to 287 inclusive, Witness Streyer.")

Subsequent to the order of the general investigation of fertilizers, a questionnaire was sent to the various short lines in the South, members of this Association, and it developed that between 85 and 95 per cent. of the fertilizer traffic was joint traffic, and that 20 to 25 per cent. is interstate, and the remainder being intrastate.

It has further developed by the replies received from this questionnaire, that with one single exception had there been any complaint as to the rates on fertilizer by the patrons of these short lines; further there has been hearings and investigations in the various states, especially in North and South Carolina and in Georgia, and the receivers or the farmers that use fertilizers were not represented to any great extent. In fact, I cannot recall at the present time of an individual farmer or user of fertilizer being represented at any of these hearings. However, as to the Alabama hearing, the organization represented by Mr. Caskie was represented. In the states of Georgia, Alabama, North and South Carolina, fertilizer is one of the leading [fol. 545] commodities handled by the short line railroads. Lumber, naval stores, cotton, and its products and fertilizer, in certain parts of Kentucky and Tennessee coal, comprise the larger part of their commodity tonnage. In the other states not mentioned the tonnage is of some movement, but not to the extent as in the states just mentioned. At the present time, the rates on fertilizers on interstate joint hauls from and to points on short line railroads are as a rule made upon combination basis. The intrastate rates are made on combinations less percentages varying in the different states with the exception of the State of Alabama, in which there is a joint-line scale. In the State of Georgia there is no percentage deduction, they are full combination. Generally speaking, the single-line rates applicable over these short lines are higher than the Royster scale. This scale is entirely too low for application over these short lines, especially as it relates to joint traffic. Georgia and Alabama are the only two states, generally speaking, that the single-line scale is less than the Royster scale. There are exceptions in one or two instances, say in

Mississippi for a distance of 15 or 20 miles, the rates are a few cents less than the North Carolina Scale or the Royster scale.

Exhibit No. 277 is a comparison of rates on fertilizers. Column A—Georgia scale over trunk and short lines; Column B, North Carolina Scale over trunk lines; Column C, North Carolina scale over short-lines; Column D, the Royster scale.

Exhibit No. 278, rates on fertilizers single-line in Tennessee, applicable over both trunk and short lines.

Exhibit No. 279 is joint rates over trunk and short lines in Tennessee for certain distances as shown.

Exhibit No. 280 is single line scale applicable over both short and trunk lines in Florida.

Exhibit No. 281 shows rates applicable over single-line haul for short lines in Kentucky, using as an illustration [fol. 546] the Cumberland and Manchester Railway.

Exhibit No. 282 shows the rates submitted to the Alabama Public Service Commission pursuant to its citation September 21, 1921, Docket 4136, less 10 per cent. In this connection this same scale was submitted to the Georgia Commission in their hearing on class and commodity rates in 1921.

Exhibit No. 283 is a comparative statement of rates on fertilizers, carloads, for joint hauls between trunk- and short-lines in Georgia, North Carolina and Alabama. Column A representing Georgia rates; Column B North Carolina rates; and Column C Alabama rates.

Exhibit No. 284 is single line rates applicable over short lines in South Carolina, with the exceptions of Blue Ridge Railway, C. M. & C., Raleigh & Charleston, Chesterfield & Lancaster, Columbia, Newberry & Laurins.

A study of these exhibits will demonstrate that with one or two exceptions, that the rates applicable over short lines by joint and single hauls are higher than the Third Royster scale. It also demonstrates the exceedingly low level of the present rates in Alabama and Georgia, so far as the rates for single-line haul are concerned, and further to call the attention of the Commission to the proposals of the short lines in Georgia and Alabama in their investigation in 1921-22, General Revision in freight rates showing that these short lines at that time felt that the rates on fer-

tilizers were entirely too low within those states and that the fair rate should be something higher than the present third Royster scale.

The Alabama Commission issued an order under Docket 4436, under date of May 26, 1924, in which they prescribed an extremely low scale of rates applicable in that state. These were issued under protest by the carriers, effective July 25, 1924. Subsequently, the Georgia Commission issued an order in which they prescribed rates over all the [fol. 547] carriers in Georgia, that were even lower than the Alabama scale, and which was enjoined in the United States court, and later were withdrawn by the Georgia Public Service Commission.

The short lines in the South are facing this proposition, that is the rates ordered in by this Commission in line with the proposal of the trunk lines are as low as the third Royster Scale, and on account of competition with the trunk lines, they feel they should be allowed an arbitrary over this scale, a minimum of at least 50 cents, and if the trunk lines proposal is granted, or perchance there should be a lower scale prescribed on any of the short lines within the Southern States, it would cause a loss in revenue, as has already been shown, a majority of the tonnage is joint line traffic and even with the arbitrary, it will be a severe loss on one of the leading commodities; therefore, these short lines request that in consideration of the rates to be applied for application within the South, so far as it affects these short lines, that this be born- in mind, that should the Royster scale plus as low an arbitrary as 50 cents, or lower, be prescribed, it will probably be necessary that the lines in most of the states come to the Commission, following their suggestion in their statement in Docket 17000 for a reallocation in any losses of their revenue on this particular commodity. (Tes. 742 747.)

Since 1921, there has been a persistent effort on the part of the fertilizer interests to secure a general reduction in the rates on fertilizers. Before this investigation began they had appeared before the State commissions of the larger fertilizer-consuming states, and in 1922 appeared before this Honorable Commission when it was considering the question of reducing rates.

In I. C. C. 68 on pages 676, 719, which was decided on May 16, 1922, it was shown that the fertilizer interests in the Southern States appeared before the Commission request-[fol. 548] ing reductions ranging from 20 to 25 per cent on fertilizer and fertilizer material. The scale submitted would have involved, the Commission estimated, a reduction of 22 per cent from the scale known as the Royster scale. The Commission refused to grant the petition of the manufacturers in this instant, and it is a recognized fact that the economic conditions in 1922 were a great deal worse so far as the farmer is concerned, than they are today, and if there was no necessity for a reduction in 1922, there is no reason, in our opinion, for any reduction in rates on this commodity within the South today. If general reports are true, the fertilizer interests have just passed through a very prosperous season, and while they may like the rest of the country have passed through the period of depression, they are no different from many other industries throughout the South, especially is this true of the short-line railroads.

Again at this time I desire to make this statement: the short line railroads in the South as a whole are doing everything in their power to foster the agricultural interest, and if they felt that reduction in the fertilizer rates would benefit the farmers to any degree, they would join the shippers in asking that the reduction be made.

The handling of the fertilizer traffic in the South is peculiar within itself. First it must be handled in large volumes in a given period. It cannot be spread out over a fairly wide period and when any movement is condensed in a short period, in such large volume as commercial fertilizer requires, it is more expensive than ordinarily when traffic moves along during intervals of 12 months. In many cases, the facilities are not available to take care of extraordinary movement at a given period, at origin or destination. Another feature is that 75 per cent of the total movement to small sidings is fertilizer and it very frequently happens that these sidings cannot accom-odate [fol. 549] the shipments on the days that they arrive and hence the carriers are forced to hold the cars out until other cars are released, thereby incurring extra expense of setting out of the train, later picking up the cars, the

cars setting on the siding, and later have an additional per diem accruing. The delivery of fertilizer is as a rule a slow process to these small sidings. Also in connection with the short line railroads, frequently they have sidings that will accommodate business for the ordinary business any time during the year, but during the time of the commercial fertilizer movement, I speak of the movement to the farmer, that is the time that it all happens within sometimes two or three months and it again causes congestion, and the railroads do not feel that they are authorized to extend those sidings for a short period to carry the fertilizer movement, many of them have not the money or the material with which to make the extensions.

None of our short-line railroads are owned by fertilizer companies that I know of.

"By Mr. Burr:

"Q. How about the C. H. & N.?

"A. I beg your pardon. They are owned by the Baileys, but I don't know just what interest Bailey has in the A. A. C. Company. My understanding is that they have sold the greater part of their interest, and that the Baileys did not have control.

"By Mr. Alldredge:

"Q. How about the Muscle Shoals, Birmingham & Pensacola?

"A. I don't know who owns this. The fertilizer railroad is purchasing now, that is provided the Commission will approve the sale." (Tes. 747-750.)

The farmer has to haul the fertilizer a greater distance than the average haul of commodities received at various stations. In some states and on some railroads, the demurrage time is extended for farmers living beyond certain distances.

Now in Georgia on certain short lines, lines that were not under Federal control, a farmer living at a distance be- [fol. 590] yond five miles, the railroads cannot collect any demurrage from him, and certainly the short line railroads, unless they bring it to the attention of the Georgia Commis-

sion, and have them to pass upon the case. This is not true of any other commodities and from the answers received from the questionnaire sent to these short lines, the investigation made develops that the average per diem on fertilizer is one and a half more days per diem than on any other commodity. The preponderance of the fertilizer traffic handled by these short lines is consigned to these farmers direct. This Honorable Commission is advised that the condition of the short lines in the South and while there has been an improvement in their situation, yet many of them are not able to meet the requirements in the way of necessary equipment, motive power, etc., and they do not feel that they are in any position nor should they be called upon to participate in any decrease in rates on a commodity so vital to them as the movement of fertilizers.

From Exhibit No. 285 it will be noted that for 65 of the important short lines in the South, that the rate of return was 1.525 per cent. standard return on the investment, and the net income of these railroads shows a loss of 2.704 per cent. It might be well to ask ourselves a question, that if a reduction in the fertilizer rates, one of the leading commodities handled by these short lines, is made, what would these figures be which are now distressingly alarming, and as the Commission well recognizes, and have been since 1918. It might be of interest to quote an answer to one of the questionnaires made by the Alabama, Florida & Gulf, a short line railroad leading from Alabama to Florida:

"Fertilizer rates in Alabama were reduced since last season. If the farmer has received any benefit from it, we have not heard of it. The rate from Dothan to the last station on our line in Alabama is $1.71 per ton, the rate from Dothan to the first station on our line in Florida is $2.37 per [fol. 551] ton; the difference in the rate is 66 cents per ton and the difference in distance is 2 miles. The Alabama farmer is paying the same price as is paid by the Florida farmer."

The short line railroads do not feel that there should be prescribed for application within the South a lower scale than the Third Royster scale, and as far as applicable over these railroads, the scale plus a minimum of 50 cents, they

would rather prefer to continue the present rates made as at present upon combination basis, restoring the Alabama rates to the combination basis, than having a joint scale prescribed. But in the event that a joint scale is prescribed, we respectfully insist that it should not be more than the Third Royster scale, plus a minimum of 50 cents per ton.

It will be in my opinion, and the short lines feel they could not go higher than 50 cents per ton, for the reason that fertilizer is one of the commodities that is affected most seriously by cross-country competition. As an illustration the trunk line railroad and the short-line railroad may be ten miles apart. The farmer could live half way between the two, or probably nearer the trunk-line railroad, but he does his banking and all of his business at the station on the short line railroad, and he goes to that station ordinarily; but now, when fertilizers, when he purchases fertilizer fertilizer is sold delivered, and he goes to the fertilizer man, and he can get the shipment to the station the same distance, then he asks him this question. "Well, can't you haul from over there, because it is a saving in freight rates to the man there," because we have got to guard against that, or we would probably have asked for a dollar a ton. We figured out, just a rough estimate, that 75 cents per ton would probably make us whole. (Tes. 750-752.)

[fol. 552] I ask this for all of the railroads that I represent; this statement here gives you an idea as to their conditions.

The Aberdeen & Rock Fish has an operating ratio of 69. The Durham Southern has an operating ratio of 64.

In 1923 that company had a net railway operating income of $51,000, in 1924, $1,893—the Aberdeen & Rock Fish. I know one thing that they had crop failures on their railroad last year. I was over there, and they had crop failures there.

I am asking for special treatment of the Dover & Southbound. I am asking for special treatment for that because 95 per cent. of their tonnage, or probably more is lumber. Now, when the lumber is cut out, why the Dover Southbound Railroad won't be able to operate unless they can accumulate some little money to go on.

The Tampa & Gulf Coast, earned almost ten per cent; they earned that because they happened to be a part of a through line of the Seaboard Air Line. I don't know whether the Seaboard owns all of the stock or not; they are controlled by them. I want them treated as a short line.

It is operated not by the officers of the Seaboard entirely. They have a separate superintendent. I would not say it is operated by the Seaboard Air Line. It is not operated separately from the Seaboard Air Line, and some of the officials of the Seaboard Air Line are officials of the Tampa & Gulf Coast Railroad. (Tes. 753-755.)

I don't know of any of those that are owned by industries, but they may be owned by the same interests. Now for instance I have in mind the Hampton & Branchville Railroad, which has been before this Commission. That is owned by the Lightsey brothers, who own the Lightsey Bros. Lumber Company, or something like that, but it is entirely separate, and the lumber company is not putting [fol. 553] up any money for the railroad. They lost $3,279.80. Now the lumber company in that connection—the only thing the lumber company is doing is helping to give that section of the country railroad facilities.

"Q. Well, can you give a supplemental statement showing how many of these companies are either controlled by or affiliated with some industry which ships over their lines?

"A. Well, I could name some of them; probably some of them I don't know myself, because I have not been through the history of all of the railroads. I am going by the official showing of these railroads."

The Kentucky & Tennessee Railroad is a railroad in Kentucky. It is not owned by the coal people, but the same people that have an interest in the coal mines there also have an interest in the Kentucky-Tennessee Railroad. I understand they have also some stockholders on the outside. Now in that connection you will find the Live Oak Perry & Gulf Railroad, in which you will find report the Commission denied them special treatment, because they said it was owned by the Atlantic Coast Line Railroad. Now as a matter of fact the Atlantic Coast Line Railroad does not

own the railroad. They own a majority of the stock, and it is a very small majority. It is not anything like 75, it is around a little over 50 per cent.

"Q. It is shown on the folder as part of the system.

"A. I cannot help that, because I went over a list of the stockholders no longer than yesterday. We found a widow in Chicago owns 900 shares of it; a widow in Savannah 250 shares of it; another widow in Savannah 200 shares of it."

We have got some orphans too, and I will tell you they have not earned a dollar on their money. They have gotten two dividends of four per cent. for investment in about 15 years. Now as to this particular railroad, here is the situ- [fol. 554] ation they are confronted with. Their president in a statement before the Senate committee, investigating committee, last year, made the statement, that in his opinion that the railroad would have to ask for a certificate of abandonment in the next five years. Within the next six months their two largest saw mills will be out, and about 95 per cent. of their tonnage is lumber.

"By Mr. Tench:

"Q. You were speaking about two mills, what mills are those?

"A. Mr. Hopkins probably knows.

"Q. They tell me they have twenty years' supply?

"A. I have that from Mr. Hopkins, their Traffic Manager." (Tes. 756-57.)

Before lunch we were discussing Exhibit 285, and particularly that portion of it, of certain lines that were owned by industries or controlled by standard lines, and I want to follow that statement up and show the Commission just the effect of an industry road, and what happened.

The Valdosta, Moultrie & Western is a railroad about 35 miles long, operated between Valdosta, Georgia, and Moultrie. That railroad was owned by the people who owned the lumber. When the timber was cut out the road was operated for about two years and lost money, and the amount of loss was so great that the owners would not put up any more money, and the railroad was put in the hands

of a receiver. The road was sold at receiver's sale, and bought by the identical owners who had owned it before. We made application to your Commission to have it abandoned, and it was abandoned. Now the effect of that in that territory, 35 miles, Moultrie to Valdosta, Georgia, to be exact, I think it is 37, at my request Mr. W. C. Vereen of Moultrie, Georgia, who is President of one of the banks, the [fol. 555] president of the cotton mill, a stockholder in the short line railroad, and also a stockholder in other interests at Moultrie, Georgia, made an investigation as to the effect of the abandonment of that railroad upon the territory served by it. And Mr. Vereen reported to me that the land values five miles beyond Moultrie, and seven miles outside of Valdosta, that within five miles each side of that railroad had decreased in value fifty per cent. The farther away you got from each side of the railroad; nearer to other railroads the land value decreased less. Now on that railroad the principal town was a town called Berlin. It had 15 stores, a band, and two cotton gins, and all that was left there last year, or what happened between 1920 when the road was authorized to be abandoned was this, that the bank failed, the two cotton gins had gone out of business, and there is one store there.

Now I am telling you this, because I am acquainted with it, and did my best to try to get them to continue to operate the railroad. That was the first railroad of any consequence abandoned in Georgia—short line railroad. In interviewing some people about getting some money to buy it at receiver's sale, they said, "We can handle our traffic by truck in this very town of Berlin." They started the automobile truck line. I personally have seen as many as five trucks loaded in Valdosta, Georgia, myself with merchandise. Now, that has happened. That was a railroad owned by the same people that owned the saw mills.

Now, let us take another situation. The Macon & Birmingham Railroad. I was once in its employ, and at that time it was owned by the same parties that owned the Southern Railway at that time. I don't know exactly the connection between the Macon & Birmingham and the [fol. 556] Southern Railway. The Macon & Birmingham operated until two years ago. I know that they had to put up money each year that I was with it, and the reports that

I have examined since indicate that somebody has to put up money. That railroad is 97 miles long. Two years ago it ceased operation upon order of the court, because it was unsafe. It is standing there today, not a train has run over the road in two years. There are 1,500 carloads of peaches along that railroad; there is one cotton mill at Thomaston, Georgia, served exclusively by that railroad. There are other industries that were served by it, and these people have been for two years up against the proposition of hauling their peaches for a distance of from one to 15 miles.

Now I am telling you this because it seems to be in your mind the fact, that because if I have an interest in the Seaboard Air Line Railroad, for instance, and I also own some stock in one of these lines, that they should not receive the special treatment, regardless of the situation. Now there is the Macon & Birmingham that I was just telling you about. Two years ago a gentleman was in my office that had raised in subscription $230,000.00, and had asked me—he was in there two weeks ago—and asked me to see a certain trunk line to see if they would take the railroad and operate it, provided they bought the railroad and gave it to them, and the trunk line railroad said to me, the official that I talked to, that they were not interested. (Tes. 757-760.)

Now, if you think that these people—they will pay him double—They will pay 100 per cent. upon the rates effective in Georgia today.

Now, I want to call your attention to another railroad in Georgia that I happen to know about, that is owned by one gentleman that is also president of the Georgia Car & Locomotive Works. The Green County Railroad has been [fol. 557] putting up money for it for years. It has made some money in the last two years, but all of the money they can make for the next ten years will it make 5¾ per cent lent by that man for the money he has put into that railroad.

Now, a reference was made to the Tampa & Gulf Coast Railroad here. Today they owe the Seaboard Air Line Railway some money that the Seaboard Air Line has advanced to them, over $400,000.00. They had to do that to give the people transportation. Now, I know something

about the Tampa & Gulf Coast Railroad, before the Seaboard Air Line advanced the money. The Tampa & Gulf Coast Railroad, you could hardly get a train over it without a derailment. The president of the Tampa & Gulf Coast Railroad at that time was a personal acquaintance of mine. I know this situation, and in raising the money, they had to get the money through certain people who had an interest in the Seaboard Air Line Railway, to furnish the money. And so, that is the history of the thing. I say that there is no more reason for a higher scale of rates for the Tampa & Gulf Coast than on a branch of the Seaboard Air Line, that runs off from it. If I am a stockholder in the Tampa & Gulf Coast, I am entitled to a fair return upon that investment; you have got to handle that as a separate entity regardless. If I was the only stockholder in the Tampa & Gulf Coast Railroad, and if the Seaboard Air Line owned the balance of the stock, 99 per cent., yet I this one stockholder, am entitled to a fair return upon my investment in that railroad. I should certainly determine very carefully the relations between that line and the Seaboard Air Line to find out whether or not the Seaboard was treating it right, giving it proper treatment, and so on, and I think that practically any one else would do it. Any business man would do it that is operat- [fol. 558] ing a railroad. I happen to have been an operating officer of a railroad in which the Seaboard Air Line Railroad owned 46 per cent. of the stock, and I want to tell you, the Seaboard Air Line Railway came across so far as I was concerned, and the stockholders, the people were taken care of. I think every operating officer would do the same thing. So, I bring those facts before you.

Now, there is another point. Now, many of these railroads in which the trunk lines, or the trunk lines have an interest, the farmers have an interest. And I can name you those, some of them. And, if this Commission takes this view of the case, a trunk line railroad, or those connected with a trunk line railroad have the management or the operation of a short line railroad, to a certain degree that they are not entitled to preferential treatment, and not treat them on the merits of the thing, then I want to

tell you that there will be a lot of short line railroads in this country that, in my opinion, will have to cease operation, unless they want to put up the money. (Tes. 760-62.)

"Q. They will have to get a certificate unless they do.

"A. The Macon & Birmingham has not got one yet, and they have not run a train in two years, Mr. Commissioner."

I don't know that they were controlled practically by the Southern Railway at that time. I can say this, I can abandon pretty nearly any railroad in the South, and not go to you until it is over. All I can do is to run it as receiver, and go to the court to give me some money, and if he cannot, go to you, it is gone. There are a number of branch lines directly owned by trunk lines that are exactly as bad, and make as bad a showing, as these short line railroads I have got here, if they were incorporated separately, but now that is a horse of another color. If I buy something and put it into my house, why then I am responsible [fol. 559] for it, that is the company. But then, on the other hand, if I simply invest my money in a railroad, because I am the principal owner of a trunk line, and want to give these people service over here, I put my money over there, and go and say to this trunk line, "I want you to help me look after that"; I think I am entitled to a fair return, and this is what is happening."

"Q. All a prosperous railroad like the Atlantic Coast Line would need to do if it wanted to abandon a branch line, would be to incorporate it separately, turn over the property to a separate corporation, and then give two shares of stock to some outside individual?

"A. Well, the Atlantic Coast Line, I do not know whether they would want to do that or not, but it might be possible."

I do not know if the Southern Railway gives away the stock. If they did, I did not know it.

But the point I am trying to drive home to you is this. That this country needs transportation. These roads have been built out into the agricultural country. That is what we have got. Now, if you do not allow them enough to operate on, why, the answer is that we wont have many of the short line railroads.

Now, you cannot help but recall the financial statement that I had in 13494. I wanted to say to you this very frankly, that those railroads were all lost practically at that time, but there has been some marvelous operation on the part of some of these short-line railroads. They have gone ahead, and they have improved their track; their business has increased some; not only that, but they have cut down their operation. Now, if there is going to be a penalty attached to that kind of operation, then there is no room for initiative there at all.

[fol. 560] "By Com. Eastman:

"Q. You have not any complaint, the way the short lines have been handled in the final decision of 13494, Mr. Streyer?

"A. Mr. Eastman, as to the adjustment of the local stations, we cannot take any exceptions, but all I am saying to you is this, the point that you have in your mind, that you have said, and wanted to know what railroad is owned by the various industries. Really, there are none of them that I know of, but I say they are probably owned by people who have some amount of stock. Then, following your thought that apparently you had in your mind, that there was some doubt as to the treatment that these railroads ought to have, then, that is another question, and the point I want to make is that I believe that you have got to handle these railroads as a separate entity, regardless of the stock that is owned, because you are entitled to it. Now, if they take these railroads, if one of these railroads is owned by say one of the trunk lines, and their earnings under Section 15-A were thrown in, I don't think that needs any preferential treatment at all, because they take advantage of that perhaps to keep from paying the Government something over 5¾ per cent." (Tes. 762-765.)

Now, the important thing, what we need in this territory is service, and I want to say that I believe that the service that the railroads have given in the South is about 50 per cent, if not 100 per cent, better than the service given before. I do not hesitate to say that. Now, there is just one other exhibit that I want to call your attention to, and

that is this, my last Exhibit No. 286, covering the years 1915 to 1924, showing the acreage planted in Georgia, which we have selected as a typical State, the crops consist of various farm products, it will be noted that the cotton represents practically 50 per cent of the farm values. This statement is worthy of study, because we believe it em- [fol. 561] phasizes the fact that was brought out by Mr. Dalton this morning, that the consumption of fertilizer is not dependent, nor the freight rate, as it is the economic condition of the preceding season. If you had a good year, the value of farm products was good, the consumption of fertilizer was a little better than it was in years when it was not so good. And that has been my observation, and I really think that the fact that the price of the commodity and the return of the farm value of products, has more to do with it than the freight rates.

Now, that concludes my testimony, with the exception of the question of Fourth Section relief of these various lines. I have discussed it with practically all of the railroads. I am not asking for Fourth Section relief for one of the railroads that you mention, the Durham & Southern, but I have a list of them here, that I am asking it for. I have a history of the railroads, and their earnings are shown in these three statements, and if you care, I can swear to this, and put it in the record if you desire to shorten your procedure. It covers about 26 pages. And, I have a financial statement, and a statement of the tonnage, which covers about 20.

I can make it an exhibit, if you will let me file it later. The Commission has heretofore always given these various lines relief. (Tes. 765-67.)

Cross-examination:

I don't know how many miles of railroad the Alabama, Gulf & Florida has; they show 32 miles, tonnage mileage. The individual roads work up this data. I don't know how many stations we have got in Florida. I don't know how much fertilizer they handle in Florida. I don't know that they handle 10,000 tons.

I knew that the Andalusia, and Florida & Gulf Railroad had asked the Interstate Commerce Commission for per-

mission to abandon. I did not know that they leased the rails from the L. & N. Railroad, but that is not unusual for [fol. 562] the short line railroad to lease rails from another railroad. There is an investment of $26,905.49.

"Q. The only reason I asked you about this railroad, you had something to say about what they got for hauling fertilizer, as though they were of any importance.

"A. Well, do I understand you, Mr. Commissioner, to say—as Commissioner of the State of Florida, that you do not think the short-line railroads of any importance in the State?

"Q. I say, the railroads don't amount to anything when they want to tear up the rails and they have got four or five miles and two stations, two little country stations?

"A. I, of course I did not build the railroad, but I presume the railroad is worth as much to the patrons—those two railroads are worth as much to the patrons that they serve in Florida as the Seaboard Air Line or Atlantic Coast Line, trunk lines."

It is a fact that the East and West Coast Railway is a subsidiary controlled by the Seaboard Air Line Railway, and operates continuous Seaboard mileage rates in Florida.

The same is true of the Florida Central & Gulf Railway; it is also true of the Tampa & Gulf Coast Railway, and the Tampa Northern Railway. They are considered Seaboard properties; they have certain—I don't know that they acknowledge ownership; they have some interest in them, but just how much interest I don't know, but they are considered as subsidiaries of the Seaboard Air Line Railway.

I indicate in here the Live Oak Perry & Gulf Railroad; my information is that is not now being controlled by the Atlantic Coast Line Railroad. I gave a list of the stockholders this morning. Around 53% of the stock is owned or controlled by the Atlantic Coast Line Railroad.

I had the Charlotte Harbor & Northern; I know that the [fol. 563] Seaboard Air Line is asking approval of a lease, and also the approval to buy the Charlotte Harbor & Northern Railroad; but that has not been approved by the Commission, and it is still a short line railroad. (Tes. 767-770.)

(Witness excused.)

bama, Tennessee & Northern wants to make a short state-
bama, Tennesse & Northern wants to make a short state-
ment."

E. C. Ash was thereupon called as a witness and having been first duly sworn, testified as follows:

Direct examination:

(Statement:) I just wanted to file two exhibits for the A. T. & N., and then ask permission to file at a later date, or get Mr. Streyer to file with his Fourth Section application, a similar application for our line.

Exhibit 288 is a statement showing the number of carloads of fertilizer moved to stations on the A. T. & N. Railroad during the months of January, February, March and April, 1924. There are eleven points of origin, that cover the entire movement to the A. T. & N. for those four months.

(The statement was thereupon received in evidence and marked "Respondents' Exhibit No. 288, Witness Ash.")

No. 289 is a statement showing comparison of rates from the four principal points of origin from which the shipments actually moved to stations on the A. T. & N. Railroad to which shipments actually moved, the four principal points being East Point, Georgia, Meridian, Mississippi, Mobile, Alabama, and Montgomery, Alabama.

(The statement was thereupon received in evidence and marked "Respondents' Exhibit No. 289, Witness Ash.")

Exhibit No. 288 shows that during the four months, January, February, March and April, 1924, there was shipped to our line 139 cars. There are no fertilizer factories on our line, everything is over two or more lines.

[fol. 564] You will notice that the bulk of the movement was from four points, and then on Exhibit No. 289 I have taken those four points and used points of destination to show shipments actually moved, and put in the present rates, and the proposed rates, based on the Third Royster Joint Scale, plus 50 cents per ton. From East Point, Georgia, you will note that an average for the entire line

shows that the proposed rates would be a slight reduction. The same is true from Meridian, while from Mobile there would be an increase, and from Montgomery there would be an increase from the rates that were in effect at the time these shipments moved—there will be a reduction, I should have said, over the rates at the time these shipments moved, but increased over the present rates that are in effect on account of a recent order of the Alabama Public Service Commission.

That is all I want to say for the A. T. & N., but I have a small statement here for the Alabama & Northwestern Railroad, which is a short line, that is handled by the A. T. & N., the stock being owned by the stockholders of the A. T. & N. The Alabama Northwestern is a short line 24 miles long, from Pine Hill, Alabama out to Coxheath, Alabama. If you will permit me, I will file this as Exhibit No. 280, which is a comparison of rates on fertilizer from Mobile & Selma to points on the A. & N. W.

(The statement was thereupon received in evidence and marked "Respondents' Exhibit No. 280, Witness Ash.")

This exhibit shows that the proposed rates from both points are considerably lower than the rates that were in effect during the first four months of 1924. However, they show some increases over the rates that are now in effect since the Alabama Public Service Commission's order of 1924. That is all I want to say except about the Fourth Section. (Tes. 770-773.)

[fol. 565] Cross-examination:

The rates shown on Exhibit 280, Meridian and Mobile, were prescribed in the Meridian Case; they are not the full combinations on the junction point. They are the same rates that were in effect from Meridian to Alabama, Tennessee & Northern stations prior to the Meridian order, and they have been put in from Mobile. Both of these railroads don't run through an undeveloped section of Alabama agriculturally; the A. T. & N. is coming out mighty strong in cotton this year, and for some years past we have shown a great improvement, and this year is going to be the best of all.

"Q. You run through a large undeveloped section, don't you?

"A. Yes, lots of cut-over land, too."

If that section is developed agriculturally, it will certainly benefit our railroad. I cannot say that the chief hope of our railroad after the timber is exhausted is to develop the agricultural possibilities of that section. I think one of our chief hopes is to some day be a trunk-line.

I know enough about the financial condition of the A. T. & N. Railroad to say that the 1924 financial statement showed a deficit. I don't know how much money that statement showed that railroad had in the bank. I don't know that it has got about half a million dollars in cash in the bank, that it has accumulated out of its operations and at the same time that the reports have been showing that it has had a deficit. I certainly do not know that.

The president of the A. T. & N. Railroad is Mr. John T. Cochran. He is also president of this other railroad.

I do not know what salary he draws from the A. T. & N. Railroad from seeing it, but I have heard what it was. I cannot say that I know it. I have heard what it was. I have heard it was $2,000.00.

[fol. 566] "Q. Well, he draws a salary of about $3,600.00 a year from this other railroad?

"A. I don't know a thing in the world about the other railroad, except I do handle some rates for them."

I cannot say we have got several officials drawing salaries from the A. T. & N., and this other railroad, both. I cannot say they are drawing salaries from the other railroad.

"Q. You have got a long list of them drawing salaries from the A. T. & N.?

"A. No, sir, not got many officials." (Tes. 773-776.)

(Witness excused.)

"Mr. Mohr: Mr. Commissioner, during the last hearing Mr. Drescher representing all of our lines, found a number of statements showing the disparity between the Alabama intrastate rates, and the interstate rates from representative points, and you asked him concerning the move-

ment. At the time he did not know what it was, but offered to supply it. He is ready now to submit exhibits showing the same rate data on that former exhibit. He is ready now to submit the exhibits.

"Com. Eastman: Very well."

H. H. Drescher was thereupon called as a witness and, having been first duly sworn, testified further as follows:

Redirect examination:

These are 13 exhibits showing the movement of fertilizer in cars and in tons from the Alabama shipping points and the interstate shipping points to destinations in Alabama covered by my Exhibits Nos. 169 to 181, inclusive, those exhibits having been prepared to show the advantage that the Alabama manufacturing points have under the rate adjustment from the Interstate shipping points to destina- [fol. 567] tions in Alabama. I have no remarks to make concerning them, they speak for themselves. I would just like to introduce them at this time in response to your request. (Tes. 776-7.)

(The statements were thereupon received in evidence and marked "Respondents' Exhibits Nos. 291 to 303, inclusive, Witness Drescher.")

(Witness excused.)

Statement by Mr. Maxwell

On behalf of the North Carolina Corporation Commission, I wish to make the following statement:

Rates on fertilizer between points in North Carolina prior to 1914 were on substantially an equal basis with interstate rates from Norfolk, Virginia, and Charleston, South Carolina. Upon order of a special legislative commission in 1914 rates on fertilizer between points in North Carolina were reduced 20 cents per ton. Resulting from this reduction, complaint was filed by the Royster Guano Company, in Norfolk, alleging discrimination in the interstate rates, and subsequently a similar complaint from the Charleston Freight Steering Committee. Upon hearing of these complaints, the Interstate Commerce Commission

found a discrimination to exist against the interstate rates and in favor of the intrastate rates, which the carriers were required to remove by reduction of the interstate rates to the level of the rates between points in North Carolina and restoring an equal relationship as between intra- and interstate rates. In 1924, in the Blackshear Case, the Interstate Commerce Commission prescribed a lower level of rates to apply interstate between Blackshear, Georgia, and points in Florida than the level of rates approved in the case of the Royster Guano Company and of the Charleston Freight Steering Committee.

[fol. 568] Upon investigation, it also appeared that the rates between points in North Carolina are on a higher level than like rates in any other of the Southeastern States. In February, 1925, a hearing was assigned before the North Carolina Corporation Commission to determine if there should be a reduction of rates on fertilizer between points in North Carolina. No order has yet been issued by the North Carolina Corporation Commission resulting from this hearing for the reasons:

First, it was apparent after the completion of the record in that hearing that an order could not be made effective until the larger part of the movement for the crop season of 1925 had taken place.

Second, that a reduction in rates between points in North Carolina without a corresponding reduction in interstate rates would create another discriminatory situation with respect to interstate shippers, and

Third, the order for this general investigation by the Interstate Commerce Commission of fertilizer rates in the Southeast had been issued and it seemed reasonable to expect that a final determination fixing a uniform general level of interstate rates within the Southeast would be made before the beginning of the fertilizer movement for the next crop season.

For these reasons, no order has been made by the North Carolina Corporation Commission in its proceedings above referred to and with the hope and expectation that such order may be made before the beginning of another season

for movement of fertilizer and under conditions which will permit a readjustment of rates on fertilizer between points in North Carolina on a level no higher than obtains generally throughout the Southeast and without creating any discrimination against interstate shippers. It seems to us [fol. 569] apparent that the level of rates on fertilizer between points in North Carolina adopted in 1914, and which became the basis for the scale of rates known as the Royster scale, is a higher scale of rates than should be continued between points in North Carolina or adopted for general application, State and interstate, throughout the Southeast. The Interstate Commerce Commission has found in the Blackshear Case that the issues involved in the case of the Royster Guano Company and of the Charleston Freight Steering Committee were limited to the question of removal of discrimination against interstate shippers involved in these complaints and that it was not the intention in those proceedings to fix a general level of rates on fertilizer for application throughout the Southeast.

It is our opinion that a lower level than the Royster Scale should be adopted for general application throughout the Southeast, and it is the purpose of the North Carolina Corporation Commission to revise the schedule of rates on fertilizer between points in North Carolina before the season for another general movement of fertilizer and as soon as this may be done without creating discrimination against interstate shippers.

"By Mr. Dalton:

"Q. Mr. Maxwell, has it not been the policy of the North Carolina Corporation Commission to accord the Norfolk Southern Railroad a higher level of rates than they accorded other trunk lines within the State of North Carolina?

"A. Mr. Dalton, I heard part of your testimony this morning with relation to that exception, and as I recall it, the statement you made about it was accurate, the Norfolk Southern is permitted to charge a higher level of rates on class traffic, and on some commodities, including fertilizer." (Tes. 778-81.)

(Witness excused.)

[fol. 570] "Com. Eastman: Now, Mr. Fleming, we will hear from you."

(Statement)

"Mr. Fleming: I am here representing the Southern States Phosphate & Fertilizer Company at Augusta, and their head office in Savannah, and we are here to ask removal of the discrimination against us in favor of shippers at Charleston and Columbia, South Carolina. I have prepared a written statement, which I am sure is briefer than I could make offhand, and with your permission, I would like to present this and file it. We have also present the general sales manager, of our company, and he can be put on the stand to verify the figures that I have in here."

William H. Fleming was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

(Statement:) You will understand that the figures I obtained from a witness who will be put on the stand.

Presentation of facts and law by Southern States Phosphate & Fertilizer Company.

The Southern States Phosphate & Fertilizer Company is a corporation existing under the laws of Georgia, with its principal office at Augusta, Richmond County, Georgia, but with its largest manufactory at Savannah, Chatham County, Georgia.

A large part of its output is shipped into the State of South Carolina.

In the year 1924-1925, this company shipped to various points in South Carolina from its Savannah factory, 12,125 tons; and from its Augusta factory, 1,523 tons.

The competitive point of other factories as against shipments from Savannah, Georgia, is Charleston, South Carolina; and the competitive point against Augusta, Georgia, is Columbia, South Carolina.

Prior to March 15, 1924, the freight rates from these competitive points between Carolina and Georgia, were sub-
[fol. 571] stantially equal, and this company makes no complaint for any discrimination prior to that date, March 15, 1924.

On March 15, 1924, the South Carolina Commission put into effect a reduction in intrastate rates of 12 per cent. The railroads entered a protest against this reduction, but put the new rates into effect.

This reduction of rates in favor of Charleston factories, gave them an average advantage on shipments from Savannah of about 40 cents per ton; and on shipments from Augusta of about 22 cents per ton.

During the year 1924 and 1925, this company shipped from Savannah into Carolina, 12,125 tons, resulting in a loss to this company at about 40 cents per ton of about $4,850.00.

During the same season this company shipped from Augusta, Georgia, to Carolina points 1,523 tons, resulting in a loss of, at 22 cents per ton, $335.00.

The total loss for that one season on shipments at both points amounted to $5,185.00.

To sustain these facts, this company has present at this hearing its general sales manager, Mr. J. A. Baggs, and asks the privilege of putting him on the stand as a witness.

On January 30th, 1925, the South Carolina Commission passed an order, making another reduction on intrastate rates, to be effective March 8, 1925, amounting to about 10 per cent.

Against this order, the Atlantic Coast Line Railroad Company and others obtained a temporary injunction in the United States District Court for the Eastern District of South Carolina, and your petitioner appeared in the character of an intervener or amicus curiae at the hearing of that case on March 19th, 1925, and presented substantially the facts above set out; and that injunction is still of force.

Assuming that this company would have the same volume of business for the next year as for the last, if this addi-
[fol. 572] tional reduction of 10 per cent. should become effective, the proportionate loss would be $4321.00, or a total of $9506.00.

Under the Constitution of the United States and under the Interstate Commerce Law, this company is entitled to have the above mentioned discrimination against it removed.

The whole trend of Federal legislation and judicial construction has been in the direction of preventing discrimination by one State against another in general commerce.

Indeed, political economists have not hesitated to attribute the growth and prosperity of the United States as a nation to the practice of free trade among the States themselves.

It is in direct contravention of this principle of free commercial intercourse, for the State of South Carolina, by lowering transportation rates inside of the State, to put into effect what amounts to a tariff against the import of fertilizers from a sister State. Besides, such a tariff puts no money in the treasury of the State, and is thus lacking in one of the chief elements of the usual protective tariff.

It is especially inappropriate that such a tariff wall should be erected by the State of South Carolina, since her two great statesmen, John C. Calhoun and George McDuffie, were leaders in opposition to a protective tariff, resulting in Carolina's Nullification Act in 1833. (Tes. 781-785.)

Fertilizers are a standard product, with fixed percentages of constituents, and there is little or no opportunity for one manufacturer to hold its share of the market against a competitor by raising the qualaty of its goods.

This Georgia company is obliged to meet the price of its Carolina competitors at any given point in the State, and consequently the difference in the freight rates constitute a direct loss to the Georgia company, and a direct gain to the Carolina company. The discrimination is flagrant and unjust.

[fol. 573] This company respectfully urges:

First, that the discrimination be removed, by putting the Carolina shipper on the same basis as this Georgia shipper;

Second, that prompt relief be given, as the loss to this company increases every day the discrimination is allowed to continue.

It is obvious that the discrimination may be removed in three ways; by raising the intrastate rate, or by lowering the interstate rates or by combining these two methods.

The choice between these three methods lies of course with the Interstate Commerce Commission.

If this company's preference is to have any weight with the Interstate Commerce Commission, it expresses that

preference in favor of making some resolution in freight rates, so as to benefit the agricultural interests of this section, which are in great need of whatever help may be given them by proper Governmental regulation of transportation rates.

Now, Mr. Baggs is here, and I will be glad to put him on the stand and ask him the general question if he furnished me with those figures.

(Witness excused.)

JAMES H. BAGGS was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My position with the Southern States Phosphate & Fertilizer Company is sales manager. My head office is in Augusta, Georgia.

Our main factory is in Savannah, Georgia. We also have a factory at Augusta.

"Q. Mr. Baggs, you have heard this statement, the written statement that I have just made. I wish to ask you if I obtained those figures of shipments and rates from you?

[fol. 574] "A. Yes, sir."

I based those figures on the official data that we paid on the regular schedules.

"Mr. Fleming: That is all I wish to ask. He has his tables with him to verify them.

I will say, Mr. Commissioner, that the rate that we found, of course we had to average a little to get that, but the nearest we could possibly come to it was over 39 cents, and a little bit over 40. If we take into consideration the volume of the shipments, we think it would be a little more. We put that down, and we may have missed it 1 cent, but we do not claim it is mathematically correct, but it is substantially correct." (Tes. 785-87.)

(Witness excused.)

[fol. 575] J. U. PARRISH was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

I have a few exhibits here showing the interstate rates. My name is J. U. Parrish; I represent the Lakeland Chamber of Commerce and Non-Acid Fertilizer & Chemical Company. I would like to make a little statement, in connection with this hearing. We have in Florida some large discriminations between the interstate and interstate (intrastate) rates on fertilizer; and some very large discriminations in the territory between points especially in the Southern part of the State, and without very much comment I would like to say that we have no objection to the Florida scale, and for the interests I represent I can say like the Commissioner of Florida would say, that in passing on this scale to be adopted in this hearing, that we would like to have as low a scale as we can get, but within the bounds of reason for interstate application, and I will submit this exhibit, and ask that the Commission in this hearing remove a discrimination between Lakeland and other points more distant from Lakeland and Jacksonville, and certain other producing points. Those other producing points are at Gainesville, Ocala, Sanford, Tampa, and St. Petersburg. I am talking about discrimination in interstate rates. That is, those points that I mention have relatively lower rates than Lakeland has from any interstate points. You understand that our rate interstate is a basic rate south of Jacksonville. On any interstate rate they have lower rates than we have. Take one example, the material rate from Jacksonville to Tampa is $1.47 a ton; our rate is $3.15. We are not complaining in the face of other rates that have been adopted by the Commission on the interstate rate, but we are making complaint on the rates to [fol. 576] Tampa and other points. Those other points are on the water; they have rates affected by water competition; but we are only 32 miles from Tampa, and we claim that it would not be that much discrimination between the two points. In other words, they can—most of these points south of Lakeland can buy the material from any interstate point, ship it in by rail, and it leaves Lakeland as a produc-

ing point out of the market. I do not know whether the rates which the carriers are proposing in this proceedings will relieve us of that discrimination of which we complain. I understand from Mr. Menzies of the Coast Line that the rates adopted in this case would do away with the discrimination.

By Mr. Burr:

"Q. One minute, Mr. Parrish, what point of origin did you name as having lower rates to Gainesville?

"A. Well, I just said, Mr. Burr, any interstate points.

"Q. No, but you said farther distant than Lakeland.

"A. Well, St. Petersburg and Tampa.

"Q. Well, but you named Gainesville as one, and Ocala as another.

"A. Well, I could name that as a State rate, Mr. Burr, Tampa, Plant City, Gainesville and Ocala.

"Q. Well, are not Gainesville and Ocala nearer the points of shipment than Lakeland, aren't they?

"A. Yes, that is true, nearer; but St. Petersburg and Tampa, and Plant City are not. Plant City has a lower rate to points in the Western part of the State than we have got." (Tes. 787-90.)

(The statement was thereupon received in evidence and marked "Protestants' Exhibit No. 304, Witness Parrish.")

This exhibit shows the fertilizer and fertilizer material rates from Jacksonville as a basing point, to Lakeland, in comparison with rates to Tampa, St. Petersburg, The Jun- [fol. 577] gle, Tyrone, Orlando, Florida, and Gainesville. Those are the present rates.

And on fertilizer material to Lakeland, Gainesville and Tampa, showing the distance to which points from Jacksonville and the interstate rates from Jacksonville, Florida, to the points mentioned. I have also shown the scale of rates from Blackshear, and Albany, Georgia, to Lakeland, Jacksonville and Plant City, Quincy, River Junction and Tampa, and the fertilizer material moving intrastate from Plant City, Orlando, Gainesville, Lakeland and Tampa to River Junction. That is just to give you an idea how the present rate adjustment of rates are in Florida. On the

third page I show the rates from Jacksonville, Tampa, and Lakeland to certain points in Louisiana; that in other words we ship to a lot of points in Louisiana, we ship stuff from Lakeland to these points. Our rates are relatively much higher than from Jacksonville or Tampa to those points.

As to whether the basis of our complaint being largely the reduced rates to Tampa, Florida, on account of the water competition at that point: I will admit that they have got water competition there, but they should not have that difference in the rates. If you are going to bring water competition into it, we are only 32 miles to Tampa. There is discrimination as between Lakeland and other points in Florida on intrastate traffic. My exhibit shows it. Between Plant City, Orlando, Gainesville and Lakeland. I have shown in this exhibit fertilizer material from these points to River Junction.

I know that the rates on fertilizer and fertilizer material, as authorized by the Florida Commission, are on a scale, and that the mileage between given points governs what the rates will be, but we can reach River Junction with very nearly as short mileage as Plant City can.

"Q. Well, what I am getting at is this. If rates are [fol. 578] based on mileage scale, how can there be any discrimination in the application of those rates, unless there is misquotation or error made somewhere?

"A. Well, I will grant you that is true; the railroads make a lot of errors in publishing rates." (Tes. 790-93.)

You know what the Commision says. The Commission handled it through what they call their informal complaint, and if you don't get anything out of the railroad, in 99 cases out of 100 you wont, the Commission will write you then, send you a little letter and tell you your recourse lies in a formal proceeding. You are acquainted with that.

I failed to get that distance from Lakeland to River Junction, but knowing the route you travel there, there should not be any difference in our rate and Plant City.

I am not prepared to say offhand how far it is from Plant City to River Junction but even if we had to travel through Plant City, we would not be but 10 miles from it. It is

not a fact that it is about 400 miles, somewhere thereabout to River Junction. I would not think it would be quite that far. It is somewhere near 400 miles.

I am not prepared to say how much fertilizer the Lakeland concern ships to River Junction; I do not know that they ship any, but I am only showing this, to show that the present adjustment of the Florida scale, and the interstate scale.

There is discrimination in the Florida scale in the rates. In other words, the Plant City rate is $2.48 a ton. We will let the scale speak for itself before the Commission.

"By Mr. Tench:

"Q There is an interstate rate from Lakeland to River Junction. Are you not sure that you have got the interstate rate mixed up in this exhibit?

"A Well, I have got the tariff authority that shows there."

We ship fertilizer and fertilizer material—commercial fertilizers.

Our principal market is anywhere in Florida; anywhere [fol. 579] in the Southern States.

I am claiming here that there is an undue discrimination in our rates; if we get the same level of rates with other points in our territory, we will be satisfied. I have not offered any scale of rates, asking the Commission; we will leave that to Mr. Burr.

I represent the Lakeland Chamber of Commerce at Lakeland, Florida, and the Non-Acid Fertilizer & Chemical Company.

"By Mr. Burr:

"Q. If I understand your testimony, it creates the impression on my mind that this fertilizer company at Lakeland has materials shipped which would make a shipment over in the Northern part of the State, Western part of the State, at River Junction. What materials do they originate there at Lakeland?

"A Well, I am not prepared to show that, Mr. Burr, but I know this, that I have hundreds of cars that are mov-

ing from Lakeland to points in Louisiana and out in the Western part of the State. They ship out as fertilizer."

They ship out as fertilizer; I don't know what it is, I only have the bills of lading. I don't know from what they create these chemical ingredients, to make fertilizer, at Lakeland. In other words, they don't have to ship any fertilizer materials from other points to Lakeland. They get fertilizer materials from St. Louis and other points, but they have certain ingredients that they mix there, that they call a fertilizer material, and ship it out; I am not prepared to say what it is, but I have hundreds of bills of lading for shipments that they have made in the last twelve months. They ship out as fertilizer materials in the bills of lading; I don't know what it is; I am not prepared to say. (Tes. 793-97.)

"Com. Eastman: Now, Mr. Cotterill, I guess you come next; unless there is someone else here who wants to take a short time.

[fol. 580] "Mr. Cotterill: Mr. Commissioner, it has been suggested that perhaps an understanding of the evidence to be submitted from now on would be aided if I were to advise the Commission and the parties now, and in the time which has intervened since the last hearing, considerable effort has been made by all interested elements so to correlate this evidence as to avoid repetition. Residing rather remote distances from each other, and considering the season of the year, it doubtless will appear that it was not wholly possible to avoid some measure of repetition, but in the main the object was as a result of the conferences, correspondence and otherwise, so to analyze the elements in the case, as that when it was determined that certain particular groups were in best position to deal with certain particular subjects, the complete and exhaustive treatment of those subjects has been left to them, without the effort being made by others to cover the same items in any partial degree. As a consequence, while it cannot be said that technically any particular party adopts as such the evidence of all the others, yet it will appear from this explanatory statement that in reality the procedure is that in the division of subjects to be testified to, the effort was to avoid the duplication that I spoke of, in effect is the same as if the parties were adopting each other's testimony.

"Now, the witness to be called to the stand (Mr. Davis), will describe the particular capacity and function in which he appears technically in behalf of the United States Department of Agriculture. It should be said that the evidence to be submitted through those agencies is of such a character as it dispensed almost wholly with the necessity of covering any part of that kind of statistical data which is peculiar to the economics of the fertilizer and agricultural industries of the South.

[fol. 581] "Following him, other witnesses will likewise deal with subjects, irrespective of the particular group or interest to be represented by them individually. The concluding part of the statement which it was suggested might well be made by me is of this character. In the main, the shipper elements in the case have started with the presumption that under any circumstances, such a revision of rates as might result from this proceeding would at least involve no aggregate increase in the revenue yielded by the existing charges. Practically no evidence will be directed as such to the sustaining of that premise or point of view which is the starting point in the case, but rather the remainder of the evidence will be directed more particularly to those phases in the case which conceivably in the point of view of the shippers' minds perhaps justify some consideration in the wind up of an average rate level less than would be yielded by the existing transportation charges.

"Mr. Mohr: May I inquire, Mr. Cotterill, when a witness appears to deal with a general subject, he will later reappear to deal with his own particular situation?

"Mr. Cotterill: I think not. On the contrary, the case has been prepared very much along general lines, and the special interests have been very much eliminated and subordinated, and I think unless it be clearly indicated to the contrary, it may be assumed that when a witness has appeared on the stand and then finished, it will represent the entirety of his evidence." (Tes. 297-299.)

R. O. E. Davis was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name and address: Roy O. E. Davis, 7014 Alaska [fol. 582] Avenue, Washington, D. C. I am a physical chemist, employed by the Bureau of Soils, Department of Agriculture. I have been associated with the Bureau of Soils, Department of Agriculture for something over 14 years.

I am a graduate of the University of North Carolina, I received my Doctor of Philosophy degree from there, specializing in chemistry. I spent one year in study at the University of Leipsig, Germany, was five years as instructor and associate professor of chemistry in the University of North Carolina, and for 14 years have been in the Bureau of Soils, Department of Agriculture, in various capacities in chemical, physical and fertilizer work.

The Bureau is charged with the investigation of fertilizer resources of the United States. In this work it has studied all of the existing sources of materials, has investigated like resources of materials, and has carried out investigations on the blending and mixing of materials, and possible future development in the industry. (Tes. 799-801.)

As an official of the Bureau of Soils, United States Department of Agriculture, I was charged with the duty of preparing and presenting the statements in connection with the pending hearing, together with certain statistical exhibits in support thereof; I was directed by the Secretary to appear at the hearing and furnish what information I had and could obtain from other Bureaus in the Department.

(Certain statements were thereupon received in evidence and marked "Protestants' Exhibits Nos. 305 to 323, inclusive, Witness Davis.")

I will proceed with the statement.

Brief history respecting soil amendments of fertilization:

From the earliest times it has been the custom to use materials as soil amendments to increase the productivity of the soil. Most of these at first were waste products and

[fol. 583] their efficiency was determined entirely by farm practice. References were made in early literature to the use of such waste products as crop residues, animal wastes, ashes, soot and lime. Recognition was given to the fact that their use often increased the crop yields, but it was not until late in the eighteenth century and early in the nineteenth that efforts were made to ascertain and explain the function of fertilizer materials. The discoverers of America and the early settlers found the Indians practicing in a primitive way, methods of soil fertilization. Early accounts described methods of the Indians fertilizing corn by placing a dead fish in the hill at each corn plant. The use of ashes, and vegetable and animal remains was also quite common before the beginning of the manufacture of so-called commercial fertilizers.

The commercial fertilizer industry of the United States as a manufacturing industry had its inception with the discovery of phosphate rock in South Carolina. This discovery was made in 1869. Near the same period the discovery of potash deposits in Germany and nitrate in Chile attracted the attention of agriculturists in various parts of the world. There followed a period of experimentation with these and other materials for use as fertilizers; and then came the discovery that the treatment of phosphate rock with sulphuric acid resulted in transforming the phosphoric acid in the rock to a form available to the plant. Another period of experimentation followed this in which efforts were made to supply all three of the principal fertilizer ingredients or plant food in one mixture, that is, a mixture containing nitrogen, phosphoric acid and potash in soluble form. The first acid phosphate manufacture of fertilizer in this country was in 1869, and from these first efforts has grown the extensive fertilizer business of today. While phosphate is used in the largest proportion of any of the [fol. 584] single fertilizer materials, there are a number of materials which have been imported from other countries to furnish the desired nitrogen and potash. These importations of material have been heavy, as may be seen from the table in Exhibit 305. (Tes. 801-803.)

Potash in this list is included under fertilizer not otherwise specified. That is, it is not stated in this column specifically. There are a number of salts of potash, potassium

sulphate, and potassium iridate, manure salts, that are used in mixed fertilizers, and each of those contain different percentages of the actual potash material. They are spoken of as potash materials, and they are valued on their content of potassium. Potassium is the element. It is calculated on the basis of oxide of potassium, KP0.

It will be noted that since 1919, the highest value of imports was in the year 1920, when the value of such imports exceeded $75,000,000.00. The imports for 1924 were valued at about $66,500,000.00. I desire particularly to point out that the imports of pyrites have fallen from over 2,000,000 tons in 1919 to about 300,000 tons in 1924, due to the competition of American sulphur producers. I don't mean tons, I mean dollars.

The number of fertilizer establishments in the United States in 1919 was over 800, and in 1923 was slightly below this figure. This number includes the establishments producing fertilizer materials alone, and also those in which fertilizers are a subsidiary product. In 1923, 573 of the establishments were producing fertilizers alone, that is to say, their only product was fertilizer; about 75 per cent were engaged entirely in the fertilizer industry, and the remainder were engaged in it as a subsidiary. Of the 573 plants in 1923, 422 were located in the South, and the value of the products in 1919 amounted to $306,523,000.00, and in 1923—$192,968,000.00, as per statistics for the fertilizer industry furnished by the Census Bureau for the year 1923. [fol. 585] This will be found in Exhibit 306.

On page 10 of this exhibit will be found statistics by States indicating the number of establishments and other plant data. In number of establishments, Georgia leads with 122. North Carolina has 64, Virginia 51, Maryland and South Carolina 48 each, Alabama 38, and Florida 17. In value of products, Georgia again leads the list with about $24,000,000.00, Maryland with $21,000,000.00, Virginia with $18,000,00. North Carolina with $17,000,000.00, South Carolina with $13,000,000.00, Florida with $12,000,000.00 and Alabama with $7,000,000.00. Out of the total value of $183,000,000.00 from the plants engaged in manufacturing fertilizers as their primary product, $126,000,000.00 was produced from the States in the South.

The sources of fertilizer materials have been many and widely distributed. The two principal nitrogen materials have been Chilean nitrate, an imported product, and ammonium sulphate derived from by-product, coke ovens and gas plants. Chilean nitrate has always been considered the principal nitrogen carrying material, but the production of ammonium sulphate has increased very rapidly within the last few years so that at present Chilean nitrate and ammonium sulphate are the two main nitrogen carriers. In addition to these two materials, other materials, organic in nature and containing nitrogen have been utilized, such as cotton seed meal, dried blood and tankage, fish scrap from the industry producing the scrap for fertilizer and oil for other purposes, and garbage tankage. In addition a number of minor sources of organic wastes such as hoof, horn, hair, wool waste, etc., have been used, the tonnage of which amounts annually to around a million tons. The consumption of Chilean nitrate or nitrate of soda in the United States has normally been around a half million tons per annum. The present consumption, however, has dropped back to that comparable to that before the war. In this [fol. 586] connection it may be pointed out that ammonium sulphate production also increased very rapidly during the World War. This production has continued high, now being over 500,000 tons per annum.

The next exhibit shows the imports of nitrate of soda into the United States by months for the year 1920-24. It will be noted that the imports in 1920 exceeded 1,000,000 tons but dropped off sharply in 1921 to something over 300,000 tons. Since that date there has been a gradual increase, 1924 having again approached close to 1,000,000 tons. The highest importation of this material was in 1918 when the amount reached 1,900,000 tons. (Tes. 803-806.)

The next exhibit shows the imports of nitrate of soda by customs districts. It will be seen that the North Carolina, South Carolina and New Orleans districts were the heaviest importers of this material during 1924, but that considerable amounts were brought into Virginia, Florida, Maryland, Georgia and Mobile ports.

The next exhibit gives the imports of nitrate of soda for 21 years extending from 1904 to 1924, inclusive. This illustrates rather clearly that the years from 1914 to 1921

were abnormal in relation to this material. It will be noted that during the period of 1921 (1904-24) there were imported 14,612,488 long tons, or 32,731,973,120 pounds of nitrate.

The next exhibit shows the annual production of sulphate of ammonia from 1915 to 1924. During ten years there has been on the whole a steady increase in the production of this material, the heaviest point being reached in 1923 to 600,000 tons. The production of 1924 was slightly less than this, but still well over 500,000 tons. The United States in relation to this product, exports considerable amounts, while at the same time some is imported from European countries. The consumption of ammonium sulphate is shown in the next exhibit over the same years that the production is shown. In 1915 the consumption [fol. 587] was approximately the same as the production and in several years thereafter the consumption exceeded the production, but since 1920, the consumption has fallen below the production, there being slightly more than 100,000 tons difference in 1924.

Sulphate of ammonia is a by-product from coke and coal. The gases are collected, and in those gases ammonia is contained, and the ammonia in the liquor is treated with sulphuric acid, making sulphate of ammonia.

In the production of ammonium sulphate, large quantities of sulphuric acid have been used, thereby increasing the total amount of this material entering into fertilizer manufacture; the other large use for it being in the conversion of phosphate rock into acid phosphate.

Phosphate rock and sulphuric acid are the largest in quantity of any of the materials going into the fertilizer industry. Two to two and one-half million tons of phosphate rock, and the same amount of 50-degree Baume acid are employed normally to produce between four and five million tons of acid phosphate. Florida supplies most of the rock for this purpose, while Tennessee and Kentucky furnish a half million tons or less. It is estimated that Florida has about 227,000,000 tons of good rock available, Tennessee about 88,000,000 tons, and Arkansas about 30,000,000. However, the largest natural deposits of phosphate rock occur in the States of Idaho, Utah, Wyoming

and Montana. A rough estimate of these deposits places the high grade rock at about 6,000,000,000 tons.

The next exhibit shows the phosphate rock mined in the United States and sold during the years 1922 and 1923. It will be noted that the amount produced by Florida is by far the greatest, that the Tennessee field contributes less than one-half million tons, and the other amounts are rather insignificant. As an illustration of the growth of the phosphate rock industry, the next exhibit shows the [fol. 588] quantity and value of the rock produced for 25 years from 1900. From this table it may again be pointed out that the year 1924 was about the same production as 1914, and that 1920 was the year of highest production and highest value of the product. The production of sulphuric acid is given in the next exhibit over the years from 1915 to 1924. The figures from 1921 to 1924 represent the production of the fertilizer industry which may be seen to be fairly constant for the last two years. Sulphuric acid formerly was produced almost entirely from pyrites imported from Spain. The use of Pyrites has reduced very markedly, as may be seen by reference to Exhibit No. 305, the value of the imports falling from $2,000,000.00 to something over $500,000.00 from 1919 to 1924. This has been due to the use of sulphur and its cheap production within the United States. The total production in this country from 1880 to 1901 of sulphur amounted to less than 8,000 tons. In 1906 the production was about 300,000 tons, and in 1917 it had passed the million mark. In 1920, 1,650,000 tons were produced. The sulphur market is controlled by Texas and Louisiana companies, mining material in Texas and Louisiana deposits. Stating the same thing slightly differently and in percentage figures, in 1900 95 per cent of the world's production of sulphur came from Sicily, in 1912—50 per cent came from Sicily, in 1917 only 14 per cent was produced by Sicily, while the United States was producing 80 per cent. In this connection it may be well to point out that while sulphur is not one of the three principal fertilizer ingredients, it is being used directly in some of the Western States in growing alfalfa, and for certain special land treatments. (Tes. 806-810.)

The packing industries located around certain cities, such as Chicago, Omaha, Kansas City, contribute much

material containing organic nitrogen and considerable [fol. 589] phosphate. One of the principal products, tankage, is derived from meat scrap material, is cooked to remove the fat, is filter pressed, dried and ground. The meal derived from it has a brownish color and contains nitrogen from 7½ to 9 per cent, and 20 to 12 per cent phosphate. The production from the packing industry in 1918 showed more than 350,000 tons of tankage and in addition, 35,000 tons of dried blood and 55,000 tons of bones. Another large source of organic nitrogen is the fish industry.

Fish scrap is derived from inedible fish and prepared for use as a fertilizer material. Along the Atlantic and Gulf Coasts, there are about 50 fish scrap plants from Maine to Texas. Most of these, however, are in the Chesapeake Bay region. The fish used in the industry is principally the menhaden. These fish travel in schools and they are caught in nets from small boats. After being transferred to steamers, the fish are carried to bins on shore from which they are transported through the plants. The fish are carried into the plants to a cooker and cooked with steam. They are then pressed for the removal of oil and water, and the residue dried and ground for fish scrap. This scrap carries from 7 to 9 per cent of nitrogen and 14 to 16 per cent of phosphates. The production of fish scrap for 1924 is estimated at about 46,000 tons, which is practically half of that produced in 1923.

Cotton seed meal has been one of the principal organic nitrogen carriers, but the size of the production varies with the size of the cotton crop. Normally the production of cotton seed meal is from 1½ to 2 million tons. However, the value of cotton seed meal as a feed product is being recognized more and more. The meal is derived from cotton seed by crushing and extracting the oil under hydraulic pressure. The residue is ground and makes a suitable material either for mixed fertilizers or for feed supplies. The meal contains 4 to 8 per cent of nitrogen, about 2.88 per [fol. 590] cent phosphoric acid, and 1.77 per cent potash. Briefly, the situation at present regarding cotton seed meal is, that, of the production in the United States, about two-thirds is used as feed material.

A still more recent development in the source of nitrogen is the utilization of atmospheric nitrogen fixed as a nitrogen

carrying compound. The only material of this character that has assumed any importance in the United States has been calcium cyanid. However, in foreign countries, especially in Germany, the products from nitrogen fixation plants are being used in large quantities for fertilizers, and undoubtedly these products will assume more and more importance in this country. During the last year some German synthetic products were first introduced in the South for fertilizer purposes.

The source of potash used in fertilizers up to the period of the World War was almost exclusively the potash mines of Germany. The annual consumption of potash in the United States at the beginning of the World War amounted to about 240,000 tons of potash per annum. With the beginning of the War in Europe, this country was entirely cut off from its source of potash in Germany, and there followed a period of intensive investigation to discover sources of potash within the United States. Many and varied sources were discovered, and potash was produced from some of these, although it was not found economically feasible to utilize them all. The production of this country rose from zero in 1914 to approximately 50,000 tons of potash in 1919. With the reestablishment of trade relations with Germany and the possibility of securing foreign potash cheaply, the production of this country dropped off very markedly. Our source of supply is now mainly the mines of Germany, and the Alsacian mines of France; although under the keen competition from foreign potash it has still been found possible to produce about 23,000 tons [fol. 591] of potash in this country during 1924. The potash imports in the United States in 1913 amounted to about 222,694 tons of muriate, 36,366 tons of sulphate, 247,950 tons of manure salts, and 490,380 tons of kainit, or a total of 997,310 tons of potash salts. (Tes. 810-813.)

The next exhibit shows the imports of potash salts by months during the years of 1923 and 1924.

I did not mention the sources of potash in this country. The principal sources have been Searles Lake, California, which is a desiccated lake, and certain lakes in Nebraska, which were worked during the war, but have been discontinued since then because it would not pay, and some by-

products, such as potash from alcohol distillation, in making alcohol from molasses. In Baltimore that is being done also, and a recovery of potash from cement mills and blast furnaces in small quantities. There are a number of still other sources, such as wool waste washings, and in small amounts from greensand, but most of these have not been commercially feasible. Borings have indicated that there are deposits of potash in Texas of considerable depth, but there has not yet been a definite discovery of deposits of great size; that is, they have not been able yet to locate definitely how the beds lay, or what is the extent of it.

The total tonnage in 1923 was something over 600,000, and 1924 less than 600,000. The value of the material in 1923 was about $10,500,000.00, and in 1924 about $10,000,000. It will be seen from this table that manure salts are imported in the largest quantity, with kainit and muriate next in order, but the value of the muriate exceeds that of the manure salts because of its high percentage content of potash. The next exhibit gives the potash produced in the United States in the years 1916 to 1924, inclusive. The number of plants operating in 1924 is not indicated, the number does not exceed that of 1923 and probably is less. It will be seen from this table that under the influence of [fol. 592] high prices and war conditions, highest production was reached in 1918. The lowest production since that was in 1921, since which time there has been a gradual increase. Wood ashes are a source of potash.

With regard to my Exhibit 315, the last preceding one, the tons shown are the total dead weight tons.

The mixed fertilizer industry has grown up around the phosphate industry. Phosphate rock, which is converted by the use of sulphuric acid into acid phosphate, is the principal fertilizer material produced in the United States. The industry has centralized about this product, and many of the larger plants produce sulphuric acid either by burning sulphur, or by the use of pyrites, and this sulphuric acid is used in treating phosphate rock. There are two main steps in the production of mixed fertilizers. First, the manufacture of acid phosphate, and, second, the mixing of the phosphate with nitrogenous and potash material. In making acid phosphate, the ground rock is treated in mixing

kettles with an equal quantity of sulphuric acid, and the material run out into bins where it is allowed to age for a certain time before being removed and ground and placed in the mixing bins. In the manufacture of acid phosphate, certain low grade nitrogenous materials, such as leather waste, hair, wool, etc., are often mixed with the rock, and the sulphuric acid added. The result is what is known as base goods, or ammoniated phosphate. The material contains 1½ to 2 per cent of nitrogen, and 16 per cent of phosphoric acid. The acid phosphate ammoniate is then used for a mixture with other materials to make up desired composition of mixed fertilizer. The survey of the Department of Agriculture in 1918 shows that 3,500,000 tons of acid phosphate and 500,000 tons of ammoniated phosphate mixed with other materials to form over 5,500,000 tons of complete fertilizer. There are assembled in the plants [fol. 593] the other raw materials such as nitrate, ammonium sulphate, potash salts and organic materials of various sorts as already indicated as sources, and there they are mixed together into fertilizers carrying two or more of the three principal ingredients. Many of the larger plants carry out complete operation from the manufacture of sulphuric acid through the preparation of acid phosphate to the mixing of complete fertilizer. Other plants manufacture acid phosphate with acid bought from the acid manufacturers, and compound complete fertilizers. Still other plants buy all of the ingredients, assemble them in their plants, and mix them into the desired combinations. The industry as a whole has been a large user of by products and waste materials. As already indicated, ammonium sulphate, a product of the steel industry, finds its greatest use in fertilizers. Waste materials from the packing houses are used, and some of the larger packing houses have established fertilizer industries of their own. However, the waste organic materials and by-products are gradually being withdrawn from fertilizer manufacture. Some of these materials, rather low in nitrogen, on a protein basis are valuable for feed material, and hence are being used more and more in this connection. The result of this has been an increasing price for the organic nitrogenous materials because of their food value and their availability in a smaller degree as fertilizers. (Tes. 813-17.)

In addition to substances carrying phosphoric acid, potash and nitrogen, it is sometimes necessary to add inert material. It is often desirable to add this material with a fertilizer to prevent its caking and becoming unsuitable for use where application is made by means of drills. The materials used for filler generally have no important value as a fertilizer, or a low value in this respect, but may be of great value as a conditioner of the mixed goods. They [fol. 594] comprise such things as peat, limestone, garbage, tankage, etc. As it is the practice in this country to manufacture the mixtures in the winter or early spring, and it is some time before they reach the farmer, they must be prevented from caking in the bags if possible, where held in warehouses for some time. This has accounted for much of the use of organic materials, with the manufacture of more concentrated ammonia and phosphate salts, the problem of preventing caking and maintaining good condition has been intensified, and studies are now being made to overcome these undesirable features with some of our most concentrated and valuable products. The development of the industry has become more centered around chemical products, and intensive investigations are being fostered to supply the increasing demand for fertilizers and to make up the shortage due to the withdrawal of organic materials.

The use of fertilizers has spread from its beginning in this country from the vicinity where phosphate rock was discovered to other sections of the United States, although the greatest intensity of fertilization is still in the Southeastern portion of the country. The proportion of fertilizers used throughout the East, however, is rather large. The growth in the fertilizer industry has continued and with the exception of abnormal years brought about by the World War the increase has averaged around 8 per cent per annum. The annual consumption, previous to the war, had reached about 7,000,000 tons. There was a decline from 1914 to 1916 followed by an increase up to 1920 when the conservation was about 7,500,000 tons. Economic depression following in 1921 affected the fertilizer trade, as this depression was felt especially in the cotton belt. In 1921 consumption fell to about 5,000,000 (five million) tons. Since

that time there has been a gradual increase until 1923 [fol. 595] slightly exceeded the consumption of 1913, and the 1924 consumption of 7,272,665 tons shows an increase over the 1923 consumption. The consumption in the South in 1924 amounted to about 4,700,000 tons which is an increase of approximately 400,000 tons over the 1923 figure.

The next exhibit shows the consumption of fertilizers for the years 1919 through 1924. From this exhibit it may be seen that in the last year North Carolina was the heaviest consumer of fertilizers, with South Carolina ranking second and Georgia third. The rise in consumption to the high mark in 1920, its rapid falling off in 1921 and its gradual rise from that time are readily seen from this table.

The next exhibit shows the tonnage of fertilizer used in each State in which the States are grouped by areas. Of the entire tonnage consumed, three States, North Carolina, South Carolina and Georgia, used in a normal year between 2,500,000 and 3,000,000 tons. Virginia, Alabama, Mississippi and Tennessee are also important users. Altogether, the Southern States use about two thirds of the entire fertilizer tonnage of the United States.

The spread of the boll weevil throughout the South has served to disorganize the cotton industry and also the fertilizer industry in some respects, but it has emphasized the importance of using fertilizers to bring the crop to early fruition and help control the weevil. The middle Atlantic States of New York, New Jersey, and Pennsylvania normally take around one million tons of fertilizer. The East North Central States consume nearly two thirds of 1,000,000 tons, while the New England States require slightly less than 500,000. Of the Western States, California alone consumes any considerable tonnage of commercial fertilizers. Since the trend in this country is to the production of larger crops per acre and the use of fertilizers admittedly accom- [fol. 596] plishes this purpose, the greatest increase in demand will probably be from Central Western States. While cotton is the crop using the largest tonnage, there are also large demands made in growing potatoes, sweet potatoes, vegetables, corn, wheat, and tobacco crops. There is also a considerable demand in growing citrus fruits and other fruits. In the State of Maine fertilizer consumed is used almost entirely on potatoes. In New Jer-

sey 40 per cent to 45 per cent of the consumption is required in growing potatoes. Rather large amounts of acid phosphates are used in corn growing in the States of Ohio, Indiana, New York, and Pennsylvania. A rough estimate of the demands of various crops places the amount consumed in cotton at about 35 per cent of the fertilizer tonnage. (Tes. 817-820.)

The intensity of fertilization in much of this country is below that of the practice in the United Kingdom, and considerably below that of several other European countries. The latest information available upon the use of fertilizers in Europe show that for the year 1920 Belgium used 513 pounds per cultivated acre; Germany, 202 pounds; the United Kingdom, 178 pounds; France, 89 pounds; Italy, 49 pounds; Denmark, 152 pounds, and Holland, 574 pounds. In 1912, Germany used 188 pounds; Great Britain, 162 pounds; France, 79 pounds, and Italy, 77 pounds per acre in crops. In the year 1923, referring to this same exhibit, it will be seen that Delaware consumed about the same average of fertilizers as the United Kingdom. The State of Virginia, North and South Carolina, Florida, New Jersey, Connecticut, Massachusetts, Rhode Island and Maine all exceeded this value in the average use per acre in crops. This exhibit shows the pounds per acre in crops during the year 1923, the use of fertilizer during the years 1923 and 1913, the percentage increases or decreases for each State of [fol. 597] 1923 over 1913, and the amount used per acre in 1919. The average use throughout the United States in 1919 was 40 pounds per acre in crops, while in 1923 the average is 35 pounds. It will be noticed from this table that the consumption in 1923 in the South Atlantic States is about 7 per cent. less than in 1913, although the average consumption per acre in crops was slightly higher. The sections showing the largest percentage increase is the East North Central, made up of the States of Ohio, Indiana, Illinois, Michigan and Wisconsin. The total average increase amounted to 1 per cent showing that in the year 1923 the consumption was approximately equal to the value of that in 1913. Due to the World War and economic features connected therewith, the intervening years have been rather abnormal for the fertilizer trade. Even in the South, where the intensity of fertilization is greatest, there are still

States in which the average consumption is low, for instance, the average in West Virginia is only 38; in Kentucky, 30; Tennessee, 32; Mississippi, 65; Arkansas, 22, and Louisiana, 51, while the average for Oklahoma and Texas is only a few pounds per acre.

The history of this country will probably follow that of others. As it becomes impossible to bring in newer regions of production the amount produced on the cultivated area must be increased and more modern methods employed to this end. This will mean the extension of fertilizer practice to regions where it has not at present become a fixed part of the farm operations. The reports of the year 1924 show that at least some fertilizer is used in every State in the Union. The variation, however, is very great, ranging from 100 tons in Wyoming to over 1,000,000 tons in North Carolina. (Tes. 820-22.)

I was just speaking of the history in this country in applying fertilizer would probably follow that of other countries as the increased production would be demanded [fol. 598] and the cost of land went up. In applying fertilizers, the practice in the United States differs decidedly from that employed in the more populous European countries. Fertilizer in this country is applied as a complete fertilizer, that is, containing at least two of the principal fertilizer ingredients. The practice here is to spread the material by machinery, and this is done generally in one operation, sometimes supplemented by later top dressing. The practice abroad differs from this in that the simple materials unmixed are used and are applied by hand largely, generally at different times, that is, the phosphate material, or the potash or nitrogen is each applied at a different time, according to the requirements of the crop. This can be more easily effected because of the labor conditions and the cultivation in small units not requiring the use of machinery as here, where our farm operations are on much larger areas. However, the practice of using mixed fertilizer is growing to a certain extent abroad.

Referring to Exhibit 320, this shows the amount of fertilizer used on cotton for the years 1923, 1924 and 1925. The column marked A gives the acreage of cotton by States, as reported to the Department of Agriculture. The Column marked B shows the cotton growers' estimate of the percentage of cotton acreage receiving fertilizer.

I call your attention to the fact that in the four States North Carolina, South Carolina, Georgia, and Alabama, 94 per cent of the cotton is fertilized. The Column marked D shows the amount of fertilizer applied per acre when used. The average amount applied per acre was 258 pounds, in 1923; 272 pounds in 1924, and 274 in 1925.

We have not the figures for the average in the United States. The figures I gave aren't the average for the United States—not for fertilizer. They are the average for [fol. 599] all of the land that is in crops, but all of the land that is in crops is not fertilized. Now, that average is 55 pounds. Now, the figures that I give on this exhibit are the total for the United States of fertilizer applied per acre where used.

It is fertilizer applied per acre, when used—but on cotton only. (Tes. 823-825.)

In the four States just named the average application is about 320 pounds per acre of cotton. The Column marked H, which is the last column, shows the average cost of the fertilizer per acre when used, based on the reported average price per ton, and the reported application per acre. The average cost per acre for all cotton fertilized was $3.94 in 1923; $3.90 in 1924; and $4.44 in 1925. In the four States, North Carolina, South Carolina, Georgia and Alabama, however, where approximately 75 per cent of the fertilizer applied on cotton is used, the average cost of fertilizer for fertilizing one acre in 1925 is $5.09. That is not shown on the table. Exhibit 321 gives the farm expenditures for fertilizer by geographical divisions and for the Southern States. In the first place, I call your attention to the general use of fertilizer in the South as compared with other sections. You will note that in the South Atlantic Division, 81 per cent of the farmers purchase fertilizer in 1919. In the six States, North and South Carolina, Virginia, Georgia, Florida and Alabama, 75 per cent of the farmers reported purchases of fertilizer. Outside of New England and the Middle Atlantic States, there is no section of the country which approaches the South in general use of fertilizer. The comparable amounts expended for fertilizer in 1899, 1909, and 1919, show the rapid increase, particularly in the South, where the expenditures

have doubled, and in some States trebled from 1909 to 1919. This is especially significant when it is noted that fertilizer was a large item in 1909. It will be pointed out in connection with a later exhibit that the future consump-
[fol. 600] tion of fertilizer is likely to be greater if favorable conditions exist. The last two columns of the exhibit show the average expenditures per farm reporting purchases of fertilizer. This amount varies with the size of the farm and the intensity of the application. The average for the South Atlantic States in 1919 was $199.00.

Exhibit 322 shows the cost of producing cotton in 1923 and 1924—there are two sheets to this exhibit. It is based on a questionnaire sent out by the Department of Agriculture to farmers located all over the cotton area. The reports that we received were classified according to yields, and the results tabulated in a table somewhat in the manner presented in the exhibit. The different classes are listed at the left of the table. Column A shows the number of reports falling into each class, and Column B is the number of acres of cotton per farm. Column C the amount expended on fertilizer per farm. This was computed by multiplying the number of acres per farm by the reported expenditure for fertilizer per acre. In this connection, I call your attention to an error at the head of that column. In the parenthesis "D times E" should be "B times E"—that is the "Acres" times the "Fertilizer." Column D shows average yield for each class. The columns marked E to N show the various production costs per acre. Of particular interest is Column E, which shows the cost of fertilizer per acre. You will note there is a close co-relation between Columns D and E, that is the yield per acre, and the amount expended for fertilizer per acre. Expressed in another way, it may be said that as the amount expended for fertilizer increases, the yield increases.

Of primary importance is the relation of fertilizer costs to total costs. This is shown in Column F. You will note that the fertilizer cost varies from 11 to 19 per cent of the total production cost. Comparing it with other costs, it will be seen that fertilizer is second only to the harvesting
[fol. 601] and marketing columns as an expense in raising cotton, Column G.

Columns P, Q, and R show the net return per acre before and after rent is charged.

One point of interest that is brought out in these columns is that many of the farmers with low yield per acre, are operating at a loss.

Page 2 of the Exhibit is the same as the first, but covers the year 1923. In making comparisons for the two years, it should be remembered that the average price of fertilizer in 1923 was about $2.00 a ton higher than in 1924.

Another point that can be drawn from these papers is that fertilizer is a labor saver in producing any crop, there is a certain amount of pre-harvesting labor, regardless of the expected yield. Naturally, as is shown by the exhibit, the amount of pre-harvest labor does vary slightly with the yield, but not in proportion to it. It follows, therefore, that if the yield can be increased without proportionate increase in labor, there will result a saving in labor. The use of fertilizer brings about this result by increasing yield independent of the labor performed. (Tes. 825-828.)

On page 1 of the exhibit, in Column D, under the yield classes where the average is 125, and 293 pounds per acre, the larger yield is 135 per cent of the smaller. The fertilizer expenditure in the two cases is $3.12 and $6.81 respectively, or an increase of 118 per cent. The pre-harvest labor in the two cases is $9.33 and 11.72 respectively, or an increase of 39 per cent. By slightly more than doubling the fertilizer application, therefore, it is possible to increase the yield 135 per cent, and at the same time the pre-harvest labor was increased by 39 per cent. In the case of the smaller yield, the pre-harvest labor cost was 7.6 cents per pound, while in the larger yield it was 4 cents per pound. By using fertilizer to increase the yield, then, it [fol. 602] is possible to reduce the amount of labor necessary per pound of cotton. The harvest labor, of course, varies directly with the yield.

The larger yield was 135 per cent in excess of the smaller.

"Q. I thought you said it was 135 per cent of the smaller?
"A. Yes, that should be."

The expenditure for fertilizer does not present itself to the farmer as a certain exchange of a small sum for a definite return of a larger amount. To him it is primarily

an expense item in putting in his crop. At best, it is a gamble to him, as is always true when he plants his crops. He may have bad seasons, the boll weevil may be especially destructive, or other pests may come. He faces these hazards as to whether he will obtain a normal crop even, and any increase in the price of fertilizer often causes him to leave off its purchase. In other words, if all goes well, his money is well spent, and is a good return; if not, he has lost an additional amount.

As has already been stated, the principal advantage from the use of fertilizer is from the increased production of crops on the fertilized area.

The use with regard to cotton represents an example in this country. Previous to the Civil War, cotton was raised by a relatively large amount of slave labor farming the best of the agricultural lands. Following the war, it was necessary to raise crops with less labor on more restricted areas. Fertilizer application was resorted to, and increased cotton production resulted. The average production of wheat which has not received intensive fertilizer application in America, from 1908 to 1913 was about 15 bushels per acre, while the average production in Germany for the same period was slightly over 31 bushels per acre. The average in England for 1921 was around 35 bushels per acre, while that of the United States is close to 13. It [fol. 603] is reasonable to expect that with increasing land costs and density of population there will be increased demand for more intensive methods of cultivation, and with it, an increased use of fertilizer. Dr. Haskell, Director of the Massachusetts Experiment Station, has estimated that in 1923 in New England three-fifths of the tobacco crop is due to the use of fertilizer; one-half of the potato, and one-half of the truck crop. In the South Atlantic States, the figures are given as one-half for tobacco; one-third for white and sweet potatoes and truck crops; one-third for wheat and two-thirds for cotton and cottonseed.

Along this same line is Exhibit 323, which is a publication of the Agricultural Experiment Station in North Carolina, Department of Agriculture, showing results of application of fertilizer to cotton. The studies which were made as a basis of this bulletin are typical of those made in different cotton States by the United States Department of

Agriculture, and by the several State Experiment Stations. The results which are shown in this exhibit can be paralleled by similar results of studies in other States. I may say that the results described here are the results of cooperation between the State of North Carolina and the Department of Agriculture.

The first point to be illustrated by this exhibit is that the use of fertilizer is essential in the raising of cotton in North Carolina. In substantiating this point, I would call your attention to the tables on pages 8, 21, 28, 36, and 43, comparing yields per acre with yields of different types of fertilizer, and without any fertilizer at all. It is shown that the use of fertilizer about doubles the yield.

Unpublished data for a series of experiments conducted in Georgia over a period of six years, show an average increase in yields from 950 to 1,263 pounds of seed cotton per acre with the use of fertilizer.

[fol. 604] Another point illustrated by the exhibit is that the application of fertilizer per acre of cotton can be considerably increased over the present practice before the point of diminishing returns is reached. In other words, whereas the tables on pages 25, 33, and 40, and 47, show that the greatest yield per acre in North Carolina is obtained by applying 800 or 900 pounds of fertilizer per acre, the figures on Exhibit 322, shows that the average application in that State is but 470 pounds per acre. It seems obvious, therefore, that many areas in this State may obtain a larger yield from the greater application of fertilizer. The extent to which it is profitable to apply this additional fertilizer to obtain a higher yield will depend on the cost of the fertilizer and the value of cotton received from the additional application.

Regardless of all that has been said regarding increased production, the cost of fertilization, the fact is that there is a constant removal of plant food from the soil by the harvesting of crops. Dr. J. G. Lipman, of the New Jersey Experiment Station, has made an estimate regarding the loss and replacement of nitrogen in the soil under cultivation in the United States. It is estimated that the annual loss of nitrogen from all lands under cultivation, not replaced by manure or plowing under of leguminous crops, by atmospheric precipitation with rain and snow, and by

the present use of commercial fertilizers, as between 3,000,000 and 4,000,000 tons. This would represent 15 million to 20 million tons of ammonium sulphate, or from 150 million to 200 million tons of ordinary commercial mixed fertilizers. (Tes. 828-832.)

The main points in this discussion may be summarized as follows. The fertilizer industry has grown from its beginning in 1869 to the point where the consumption is between 7 and 7½ million tons per annum. The high mark in 1920 being 7,600,000 tons. The tonnage for 1924 of 7,272,000 tons just slightly exceeds that of 1913, for the in- [fol. 605] dustry as a whole has just about recovered its pre-war conditions. The consumption in the South in 1924 was 4,680,000 tons, an increase of about 400,000 tons over that of 1923. The fertilizer used on cotton in 1924 was about 2,100,000 tons, an increase of nearly 300,000 tons over 1923; and the 1925 consumption exceeds that of 1924 by about 200,000 tons. The materials going into mixed fertilizers are gathered from various sources in this country and bought in quantity equal to the mixed material, and after treatment and manipulation redistributed to sales agencies. The consumption of fertilizer has shown an annual increase of about 8 cents for normal years, but the years since 1914 cannot be considered normal as to the value of fertilizer consumed. Georgia and South Carolina especially are the heavy consuming States, and are not taking what may be expected of them.

The average use of fertilizer in the United States in 1923 was 35 pounds per acre in crops. Delaware consumes about the same as Great Britain; the amount being 173 and 178 pounds per acre respectively. The nine States of Virginia, North Carolina, South Carolina, Florida, New Jersey, Connecticut, Massachusetts, Rhode Island and Maine, all consume larger quantities per acre of crops than Great Britain—the Isles.

While the application of fertilizer, which on certain crops in certain sections is large, even in the South, where the intensity of application is greatest, there are still States using little fertilizer per acre. There will be an increased use of fertilizer with increasing costs of land, and the demand for larger production. The average cost of fertilizer per acre on cotton in the four States of North Carolina, South Caro-

lina, Georgia and Alabama, where most of the fertilizer is used on this crop is $5.05 in 1925. The cost of fertilizer is from 11 to 19 per cent of the total cost of producing cotton, [fol. 606] and only the expense of harvesting and marketing exceeds it in value. The value of fertilizer as a labor-saver is pointed out. The pre-harvesting costs in growing of the crop is nearly the same with or without the use of fertilizer, but the increased production by the use of fertilizer raises the labor efficiency very much. The exhibit from the North Carolina station emphasizes the necessity for using fertilizer on cotton if an adequate yield is to be expected. (Tes. 832-834.)

[fol. 607] Cross-examination:

Of these raw materials that enter into the manufacture of fertilizer supplied in this country, phosphate rock would constitute a volume by far the largest; the next to phosphate rock, I would say that sulphuric acid is largest in point of volume; those two being combined to make acid phosphate, which of course is the base of all commercial fertilizers. I would say, of the raw materials entering into the manufacture of fertilizer for use in this country, phosphate rock and sulphuric acid together constitute by far the largest in point of volume.

It is rather a common practice in the Central West, particularly, to use acid phosphate for direct application to the soil.

In one sense I would say it is also rather a common practice that the farmers will purchase their own materials, and do their own mixing, in that it is a widely distributed practice, but as to the volume of business in comparison with the commercial fertilizer trade, I think it is comparatively small. However, let me modify that by saying that there are a number of cooperative farm organization that are doing the mixing for the farmer members. Some of those have even established their own mixing factories. The Department of Agriculture has been favorable towards that practice.

Such figures as we have tend to show that there has been a gradual increase in the consumption of fertilizer since 1920 up to and including 1925—I don't think we have all the figures for 1925. Such figures as you have collected

tend to show that is true. I estimated that the consumption in the Southern States in 1925 would be something like 200,000 tons greater than in 1924. The variation in the amount of fertilizer used per acre in different States depends to a considerable extent upon the character of the crops grown, and also upon the character of the soil. Cer- [fol. 608] tain crops are fertilized more than others, cotton and tobacco are especially heavily fertilized, potatoes in Maine and New Jersey, and certain soils also are more heavily fertilized than others.

"Q. And that would perhaps explain the more marked variations as shown on your Exhibit No. 319 in the pounds of fertilizer used per acre as shown on that exhibit? For instance, in Florida it appears that in 1923 the use per acre was 557 pounds, does not it?

"A. Yes." (Tes. 834-37.)

That would be explained by the character of the crops produced in Florida, because much of the crops there are truck crops, and citrus fruit crops on which they put heavy applications of fertilizer, and probably the character of the crop explains that.

"Q. In the same manner it appears that the use per acre in North Carolina and Virginia is relatively heavy as compared with some of the other States. Would that be explained in part by the fact that those States produce considerable quantities of tobacco, you think?

"A. I think, in part, yes. But they produce other things besides tobacco. North Carolina produces considerable cotton.

"Q. Yes.

"A. Virginia, not so much."

The extent to which it is found profitable to use fertilizer depends upon the cost of the fertilizer; that is one of the factors. Probably is the main factor.

From exhibit 320, taking North and South Carolina and Georgia, it would seem there was a material increase in the cost of fertilizer per ton in each of those States in 1925 as compared with 1924; but, on the other hand, the fertilizer used on cotton in each of those States was substantially greater in 1925 than in 1924. But the cost of fertilizer alone

[fol. 609] would not be the entire argument. The amount of money that the farmer had received from his previous crop, and his condition regarding his debts, probably would also be one of the determining factors.

I think that those are perhaps the explanations of the fact, notwithstanding that in 1925, for instance, the average cost of fertilizer in North Carolina was $4.10 per ton higher than it was in 1924, nevertheless, the use of fertilizer on cotton in North Carolina increased in 1925 to 481,275 tons as compared with only 467,550 tons in 1924, although I had not analysed that on that standpoint thoroughly.

In some cases I should say that the cost of fertilizer plays rather a small figure part in the amount that the farmers use yearly; and perhaps you would pick a case that exactly fits those conditions. That is, where the use of fertilizer has become an established practice with the farmer, he has come to recognize its value in growing his crops, then the price of fertilizer loses some of its influence. That is, it is a part of his fixed practice to apply so much fertilizer, regardless of fluctuation in price, and North Carolina being the heaviest consumer, has probably come around largely to that position. That is a point of education of the farmer.

"Q. Well, the same thing appears to be true from these figures in the case of South Carolina and Georgia, because if you will note that although the price in South Carolina was $29.50 in 1925 as compared with only $25.40 in 1924, yet the use in South Carolina in 1925 was very nearly 50,000 tons greater than in 1924?

"A. I think that is a recognition of the fact by the farmers that the fertilizer is a valuable thing to use."

All of those figures on my exhibits were obtained from a number of sources. The Bureau of Agricultural Economics, the Census Bureau, the Census is in the Department of Commerce. Well, all of the statistical agencies that we had [fol. 610] in the Department, as well as checking them against the Fertilizer Handbook, which was in itself compiled from those same reports.

My Department has not made any investigation or study to my knowledge as to the reasons that have brought about the rather pronounced increases in the price of fertilizer, 1925, against 1924, as shown on these exhibits.

The Department of Agriculture is not advocating any particular treatment of the rate structure under consideration. We are not here—I was not directed to come here as an advocate at all, but simply to furnish any information that the Department had; or that we could secure for the Commission's information.

I said it was at the request of the Secretary of Agriculture that the data that I have submitted in the instant case was prepared; the Secretary had the data prepared in response to a telegram from Mr. Cotterill directed to the Secretary, asking that a representative be sent. I had no purpose in mind when I determined to work up this data which I presented in this case; just simply to present the information along economic lines, and the history of the industry, was the only purpose in view. (Tes. 837-41.)

I have made no study to determine what, if any effects, the freight rates have upon the sale, distribution or use of fertilizer.

The Department has made no detailed study that I know of, to determine whether, during the periods when the price of fertilizer was cheap, that it resulted in increased use of that commodity.

Investigations on the subject have been going on now since 1913 to determine whether it was commercially possible to concentrate the plant foods in fertilizer, thereby reducing the bulk to be handled, and consequently reducing [fol. 611] the transportation charge. There have been a number of results. It perhaps would require a statement something of the length I have already given to give you those results in detail. That matter had been under consider*able* by our Department, and we have had promising results.

"Q. Now, with respect to your Exhibit No. 311, that shows the total consumption of sulphate of ammonia, and 310 shows the annual production. Consumption being considerably less in 1923 than the production. Can you state what became of the excess, or the surplus?

"A. Why, that was exported."

There was an amount, I have not the figures for the imports of sulphate, but some sulphate was imported and

some exported, but the difference there amounts to about 100,000 tons, or a little bit more, 548 in one case and 436 thousand in the other.

Now, on Exhibit 314, in 1921, I show the production of 60-degree and 66-degree acid, and all other acid; that is higher grade that results, a higher degree than 66. 60 and 66-degree acid is not used in the manufacture of fertilizer, the more concentrated acids are not used for the fertilizer. In the subsequent years there were considerable quantities of high degree acid than 50-degree manufactured. There was no reason for not showing them except that this was shown this way in the statistics by the Census Bureau, as we got them. I had no reason in presenting them. In order to have the proper comparisons for the last four years, it would be fair to eliminate all but the 50-degree acid from the figures shown, but I have not those figures at hand. All but the 50-degree acid should be eliminated from the 1921 figures in order to make the comparison for the last four years fair.

With respect to Exhibit 315, they represent the values at the ports on the potash shown in that exhibit.

[fol. 612] I think, of the Southern States, that North Carolina, in the last few years, has shown the greatest increase in the use of fertilizer. I can verify that from this table. Taking Exhibit No. 322 for example: Taking under Harvesting and Marketing, I show cost at $16.42. That covers the picking and ginning, any of the costs going in from the standing crop to its sale.

"Q. Do you know what it costs to pick cotton? It is usually done by the hundred in this cotton section, is it not?

"A. I suppose it is; I don't know."

I am unable to say regarding that, because the figures were prepared in the office of the Division of Statistical and Historical Research, and I cannot say what the value was given to the picking. I show for example, that the cost of cultivation where I use 60 pounds per acre is $3.99, and where I use 140 pounds the cost of cultivation is $5.76. That is not the amount of difference in the use of 50 pounds of fertilizer. One man may have quite different conditions to combat in cultivating, *and* those of another man.

He may spray his cotton, he may dust his cotton more. He may cultivate his land a good deal more, and he may prepare it better.

It just happens to be true that the farmers that have used the greater amount of fertilizer do intensive farming, and perhaps plow the cotton much more often, and hoe it more often than the man who uses less fertilizer; the better farmers use fertilizer.

"Q. And work their crops more carefully and more often?

"A. Better cultivation; they use better methods all around." (Tes. 841-46.)

These exhibits include the total consumption of materials and mixed fertilizers, so far as we had the figures; they purport to embrace the whole thing.

By Mr. Mohr:

"Q. Have you any further explanation about the show-
[fol. 613] ing on Exhibit 322? It indicates that the yield in the first item, 60 pounds per acre, the amount set as fertilizer per farm, $98.61, in the last item you find 501-pound yield, and the amount expended for fertilizer, $97.41.

"A. No, I have no explanation to make, except that these are the figures compiled from the reports, in the first case, of 24 farmers reporting, and in the other case of six. It may be that the small number of six may be off somewhat."

I cannot say definitely regarding the States of Alabama and Georgia, but I think they are representative as a whole.

[fol. 614] Redirect examination:

The sources of information from which these reports were obtained on this questionnaire were all of the statistical agencies in the Department of Agriculture, the Bureau of Agricultural Economics, the Bureau of Soil-, also the Census Bureau of the Department of Commerce. They secured their information directly from the farmers through questionnaires. These exhibits here are based on 20,000 questionnaires sent out to farmers throughout the cotton area, and the replies coming in were tabulated and the results are the exhibits.

"Q. Now, doctor, with respect to your statement that the cost of fertilizer was at least some factor with respect to the amount used. I would like to read you a statement made by a previous witness, and ask you if you think that his reply is fairly illustrative of the point that you desire to bring out. That witness was Mr. Hutchison, a railroad witness, who was the general freight agent of the Columbia & Greenville Railroad Company, page 440 of the testimony at the Atlanta hearing. Mr. Gwathmey was questioning the witness himself:

"Q. Colonel Robman suggest- or asks why you did not use any nitrates this year, Mr. Hutchison? A. I will tell you; last year was a little bit hard with me, and I did not have the money to buy the nitrate of soda,"—is that about illustrative of what you had in mind?

"A. Yes, I think so."

I think it is a fact that last year, in 1924, with a lower price, the farmer could buy fertilizer on a credit, and this year the only way he could get it was to pay cash for it, and pay higher price. The fertilizer industry is going through a reorganization. It is a fact, as far as his credit with the fertilizer industry directly is concerned, but he is still able to borrow money and buy his fertilizer through banks—through local banks or through agencies. The price that I gave for 1924 is the price that the farmer put on his questionnaire, and the question was not asked him whether [fol. 615] it was cash or credit. That is the price he paid. (Tes. 847-850.)

By Com. Eastman:

"Q. Has the Department given any consideration to the question whether or not the credit arrangements for the sale of fertilizer are unduly burdensome?

"A. Why, the Department has felt that the banking engaged in by the fertilizer industry was not a proper function, and the industry now has come to the same conclusion.

"Q. You think that the credit was being furnished in some way to a greater advantage, and less burden?

"A. Well, I, independently, cannot express an opinion on that."

The prices that I show for 1925 are presumably the prices that the farmer has paid if he goes in and buys it. I don't know whether or not the average small farmer during the current year, who was unable to pay cash and had to arrange to get his fertilizer in March, and pay for it in November, under the old custom throughout this section, did not pay from 5 to 8 dollars per ton for the use of that money from April to November, than the man that was able to pay cash for his fertilizer. (Tes. 850-51.)

Yesterday I stated that the advent of the boll weevil had considerably disorganized the fertilizer industry. I do not know as to the detail of the effect of boll weevil on Georgia, but Georgia and South Carolina both dropped off considerably in their consumption of fertilizer, due particularly to the infestation of the boll weevil. They had to use other methods, such as dusting the cotton to keep down the boll weevil, and part of their expenditures were in that direction.

On previous years the fertilizer consumption in the State of Georgia was in excess of that of the State of North Carolina, predicated on previous years; North Carolina is now in excess.

Referring to this table, I find that the decrease in Georgia in 1923, from 1913 consumption, was 39 per cent, but Georgia is regaining its old position. I would say this, that Georgia is tending to come back rapidly to its former position—its former consumption, as to whether it would [fol. 616] pass North Carolina, I would not venture a prophecy, because North Carolina may continue to increase. I cannot tell exactly what the ultimate relationship may be, but at least the total net volume of the tonnage consumption in the State of Georgia is now rapidly tending towards restoration of normal conditions. In North Carolina there is a considerable consumption of fertilizer in the growing of tobacco. The use of fertilizer in the successful growing of tobacco is a practical necessity.

"Q. Has the range of your observation concerning the uses and distribution of fertilizer been such as to bring

your attention to the fact of the very remarkable increase in the tobacco raising in the State of Georgia?

"A. Why, I have not given any particular attention to that."

I know that tobacco is being grown in Georgia to a considerable extent. If that movement accelerates, it would be a factor further tending to affect the relative fertilizer consumption of Georgia as compared with North Carolina.

I am not qualified to say that in the State of Georgia today that the farmers, or perhaps in the best conditions and the most prosperous condition that they have been at any time since the War.

"Mr. Ignatius: I would like to ask the Doctor a question in regard to your Exhibit 321.

"By Mr. Ignatius:

"Q. You show in the first four columns cotton farmers reporting purchases of fertilizer. Can you say whether the reports sent to you by the farmers indicated the character of fertilizer used, whether a commercially mixed fertilizer, or whether a locally mixed fertilizer under cooperative plan, or whether mixed on the farm?

"A. No, it would not indicate."

My department accepted those reports as covering all kinds of fertilizer that may have been used by the farmers, regardless of its make-up or source. Those forms of reply did not indicate the character of the materials used in the fertilizer used. I think I have a form here, if I can locate [fol. 617] it. The questions asked on the form were under the heading of "Commercial Fertilizer Used on Cotton Acreage This Year," and Column A, "Proportion of the Cotton Acreage Receiving Fertilizer this Year," and Column B, "Average Number of Pounds Applied Per Acre When Used," and Column C, "Average Value Per Ton of Fertilizer Used." I would not interpret the reference in my form to the commercial fertilizer used by the farmers as necessarily indicating only the commercially mixed fertilizer bought from the fertilizer factories. Cottonseed meal is considered as a very excellent fertilizer, and especially so in tobacco.

As a general rule there is more fertilizer used in the growing of tobacco crops than there is in cotton or corn. The same is true on truck, as indicated on my exhibit on Florida. When a State, or any community, has passed from the production of a cotton crop into a truck crop or a tobacco crop, it would have a tendency to increase the consumption of fertilizer. (Tes. 851-856.)

(Witness excused.)

EDWARD A. O'NEAL was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is Edward A. O'Neal. My official residence is in Montgomery, Alabama. I am vice president of the American Farm Bureau Federation. In this proceeding there has been delegated to me the responsibility of submitting a carefully prepared statement in behalf of the various farm organizations whose appearances have been entered here. The interest of the farm organizations in this proceeding is both direct and indirect. A quite considerable part of the fertilizer used in the various Southern States is purchased from the manufacturers by the farm bureau organizations under a centralized system of cooperative trading. For instance, last spring the Alabama Farm Bureau Federation purchased and distributed to its membership in Alabama approximately 81,000 tons of fertilizer of all kinds. Hence as purchasers of fertilizer we are [fol. 618] directly concerned in the transportation costs in the aggregate.

Secondly, the farm organizations act in a representative capacity in a number of fields of activity affecting the successful development of our agricultural enterprises. Educational and experimental work is done by the farm organizations in behalf of their membership and agriculturists in general. Our organizations and activities are available in matters of this character for the purpose of attending to the more general interests of the members of our several associations.

Of the articles transported by railroad for use in agricultural pursuits in the South it is very probable that fertilizer is the largest and most important single item. The relationship which that article bears to successful agriculture is immediate and so direct as in large measures to control the tonnage of agricultural products transportable by the carriers and indirectly to control their total tonnage by reason of the influence which successful agriculture has upon general conditions of prosperity throughout all lines of business in the South.

The cost of fertilizer bears a considerably important ratio to the total cost of farm operations and in turn transportation costs effect in quite an appreciable measure the cost of fertilizer.

From what has just been said by me it should not be understood that any effort has been made to leave an impression that any permissible change in average transportation costs on fertilizer either upward or downward as a result of this proceeding would automatically control the welfare of the farmers of the South. While the figures later to be submitted will sufficiently indicate the considerable extent to which transportation costs affecting fertilizer are of practical significance in terms of transportation cost per fertilized acre yet no effort is here being made to say that the volume of fertilizer to be consumed would be [fol. 619] greatly more or less dependent upon the measure of freight rate levels which will result from this proceeding.

It is equally important and desirable to emphasize that the Southern farmers are not in this proceeding asking for any charity or benevolent dispensation in the way of reduced transportation costs to which they may not otherwise be entitled. There is no apparent use in emphasizing the distressful conditions which did prevail throughout the South with respect to agriculture only a short while ago. Nor on the other hand, would it be advisable to assure that what may seem to be an apparent condition of general prosperity now prevailing is permanent or uniform.

We do say, however, and respectfully ask this Commission to take into account the fact that in its work of gradually remaking the freight rate structure in this country the Commission should give a fair regard to the peculiar

uses of different articles and so distribute the total transportation burden as will impose a fair relative part upon agriculture. In other words, in considering the proper disposition of this case involving as it does an article of direct importance in agriculture we urge the Commission to find from the evidence the extent to which sound national economy would justify the making of as low rates as consistently can be done on this particular article. We certainly do not understand the point of view of railroad executives in undertaking to secure the equivalent of general advances on fertilizer in the South and we shall depend upon the detailed evidence to indicate the extent to which fertilizer rates might properly be reduced instead of increased.

It is further desired that through me the following statement shall be made: In the conduct of this case there has been a coordination of activities in a very large degree. Our organizations have accepted the tender of the fertilizer associations to assume responsibility for a considerable amount of technical data. The interest of the United States [fol. 620] Secretary of Agriculture and his Departmental Executives has relieved us likewise of considerable burden of preparation which otherwise we would have assumed. Moreover, our various State organizations have cooperated closely with the different Southern State Commissions and with other interested elements in the case.

In view of such arrangements the evidence has been greatly simplified and repetition avoided. If toward the close of this hearing it should appear to the presiding Commissioner and the Examiner or any of the parties that the record is deficient as to any matter which it is within our power to supply, we will be very glad to take the proper steps to secure the desired information. (Tes. 856-60.)

Cross-examination:

I said that our cooperative associations buy and distribute to farmers who are members of the associations. The farmers' bureaus buy largely materials in Alabama, but in other States they buy the mixed fertilizers I understand. I am not familiar with other States, but we do not do it very largely in Alabama. In Alabama the farmer does largely his own mixing. Our bureau buys the mate-

rials and distributes them to the farmer. The farmer does the mixing. There is quite an economy in the practice, in preference to buying the completed fertilizer direct.

Redirect examination:

We do not purchase phosphate rock and sulphuric acid to make acid phosphate.

I casually followed the evidence of Mr. Davis to some extent. In one of the exhibits, returns from questionnaire were given, which indicated the cost of farming in Alabama among other States.

I think that those statistics shown in that exhibit as to farming costs are fairly typical of Alabama; we have worked out in Alabama with our Agricultural College a plan that it is advised for the farmers to use, under which the farmer used fertilizer. I am sure that the Doctor got his data from the College. The College directly getting a [fol. 621] great deal of the information itself, and supplemented with the information that he would get individually, from the Department at Washington, I am sure that it would be as accurate as it is possible for a man to get that, without examining carefully and checking those figures. I have all of those figures, and if necessary, if you would like to have them here, we can have a witness, one of the men from the College, give you the data.

It is entirely feasible for the farmer to buy such material as to mix, himself, which would result in getting a mixture which would analyse what he wanted, and eliminate paying freight on fillers to the farmers. He would get just as good results that way as he would by buying the mixed fertilizer; he gets better results, as far as any data that I have. (Tes. 860-64.)

(Witness excused.)

A. D. Strobhar was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is A. D. Strobhar, I am president of the Southern Fertilizer & Chemical Company, residing in Savannah,

Georgia. In addition, I am a member of the executive committee of the National Fertilizer Association, having been elected from District No. 6, which embraces this territory. I have been especially delegated in this proceeding to represent the president of the National Fertilizer Association, Mr. Carter, who was compelled to be absent by reason of business necessities.

The reasons for my presence here are as follows:

First, it is desired to emphasize the fact that other representatives of the Association and the industry itself are participating in this proceeding by express authority and direction of the executive management of the fertilizer industry and that as to most of the details which will be dealt with by such other representatives it can be depended upon the views expressed by them have received executive sanc- [fol. 622] tion.

Secondly, it should be understood that in last analysis the fertilizer industry has no interest in the transportation costs in the aggregate excepting so far as the interests of the consumers are of moment to the industry. Irrespective of the form and terms of sale it may be considered that the total transportation costs of raw materials and distribution of finished products are expressed in the ultimate consumer prices. So far as concerns the manufacturers of fertilizer, their direct interest in the transportation rates is that there shall be uniformity and that as early as possible there be an adjustment of inequalities now existing. But so far as concerns the total transportation costs the interest of the industry is the same as that of the consumer, namely, to assist in a just determination of such reasonable transportation costs as will assign fertilizer to such rating as recognizes its peculiar position as an agricultural necessity.

Thirdly, it is desired through me to emphasize the fact that the fertilizer industry has been completely deflated with the exception of transportation costs. While in recent times fluctuations of prices have been material they appear to have established themselves in large measure around the present figures. If transportation costs on fertilizer were generally reduced, the ultimate consequence would be lower

prices at least to the extent of the reductions in cost. Correspondingly, if transportation costs were again to be advanced, the ultimate consumer would equally have to stand the difference.

The executive secretary of the National Fertilizer Association has compiled the following information, from the Government statistics:

"Government figures for the very latest years are not available. A comparison of 1919, 1921 and 1923 will show clearly, nevertheless, what has happened during such recent period. According to the figures of the Department of Commerce, the average value of fertilizer per ton in 1919 was $34.54; in 1921 it had dropped to $29.17, and in [fol. 623] 1923 it had dropped to $23.48. In 1924 there was a still further drop, while in 1925 improvement took place which, however, has probably scarcely restored the 1923 level.

Not only have freight rates remained high, but labor costs have remained high, and in some cases the important raw materials upon which the manufacturer of fertilizer depends have remained above pre-war levels. At the same time the farm products upon whose purchasing power the ability of the farmer to buy depends, have had a purchasing power as low as 68 per cent. of pre-war, and even with the recent improvement are still between 90 and 95 per cent. of pre-war. Freight rates, per contra, range roughly 50 per cent. above pre-war.

1920 prices of fertilizer materials were 100 per cent. above pre-war. 1924 prices were 6 per cent. below pre-war; while 1925 prices, speaking of the fiscal year, were approximately 5 per cent. above pre-war. In this connection it must be borne in mind that these are wholesale prices, and that the general level of wholesale prices of all commodities is between 55 and 60 per cent. above 1913, which is usually taken to represent pre-war conditions."

The Government itself fully understands the industry has been a very precarious one and many millions of dollars have been lost in it during recent years. I do not understand the circumstances compel or justify me in detailing the financial position of the fertilizer industry which pre-

vailed until very recently, nor would I be justified in going very far in a discussion of the present financial conditions of the important companies. Suffice it to say, however, that the investing public has expressed its judgment concerning the values of the securities of fertilizer companies at this time through the current market quotations, and examination of which will sufficiently disclose the low figures at which such securities may be bought.

Other witnesses have especially prepared themselves to assist in this proceeding to the extent of supplying technical data of various sorts. I have not undertaken myself to [fol. 624] be prepared to discuss freight rates in particular nor the immediate issues in this proceeding other than as I have already done. ((Tes. 864-868.)

Speaking broadly, it is true that factories located at port cities have what is regarded as a cost advantage. The prices along the coast—at the coast producing points, those are the basing—the market prices are made as based on the Coast manufacturing points. Generally speaking, when fertilizer is purchased at a Coastal producing point, it is purchased on the basis of f. o. b. shipping point, the purchaser paying the transportation rate from such point to destination—it is added to the price. In the case of the factories located in the interior, they are compelled in the adjustment of their prices, to meet the competitive prices fixed by the port communities. In effect, then it is the same as if to say that an interior factory sells its fertilizer on the basis of the port price, plus the transportation rate to the interior destination. If, then, there were to be a change upward or downward, in the line-haul rates on fertilizer from a port city to an interior destination, such change would at once affect the total price paid by the consumer purchasing from such port city by the amount of such port rate change. If the purchase was made from an interior point, such interior price is made on the price, plus the price from the port. It would be the same. (Tes. 868-9.)

Cross-examination:

That method of determining the price has prevailed a good many years, based f. o. b. port. Some years ago there used to be a differential $1.50 or $1.75, based on interior points, but for a good many years, the price list comes out f. o. b. ports, Savannah, Charleston, etc.

"Let us just take the preceding year. Take last year, for example, the year 1924.

"A. Yes.

"Q. Did that have anything in the world to do with that [fol. 625] price? Is it not a fact that your prices at the particular point would change every day, and one dealer would not know what the other man was charging?

"A. 1924 cannot be used as a comparison.

"Q. Well, that is a fact, is it not?

"A. 1924 cannot be used; it is a fact it cannot be used as a comparison, business was demoralized completely."

We ship into South Carolina. The freight rates intrastate in South Carolina were changed by the State Railroad Commission. After that change, I could not say if there was any corresponding reduction in the price to the farmer, or whether immediately after that change there was an advance of a dollar in the price. No, in 1924 the later—at the end of the season of 1924, the prices were lower than at any time during the season. In the spring of 1924, quite so.

There was no market price of fertilizer in the spring of 1924; there was an effort to liquidate what we had. I know of sales made in April, 1924, at a lower price than had ever been made, and stuff was shipped into South Carolina, and somebody had dumped their stuff on the market, and you cannot take it as a criterion. This year we hope we have got just the opposite condition. I would not say that throughout the period of this year, all fertilizer dealers, all of these mixing plants that we have been referring to here, several hundred of them in Georgia, all had one price on the same commodity, and there was no varying this year. I have heard of some varying in the price this year. But not as a general rule. There was a very good market price for the spring of 1925, a very firm market price, but that does not mean to say that the mixing plants do not vary from it in price or terms. (Tes. 869-72.)

I am not prepared to say whether the bigger concerns varied from it or not. It was considered that they did. I maintained the market, so far as my company was concerned. I lost business by doing it. My concern is The [fol. 626] Southern Fertilizer & Chemical Company. My tonnage reduced in 1925 as compared to 1924, because I

maintained the market. That is what I believe. At least, it was reduced, and I think it was because I maintained the market. We are an independent corporation.

My corporation, the Southern Fertilizer & Chemical Company, has no understanding or agreement with any concern as to maintaining the market price.

We maintained the market price. There was no market price in 1924. My market price is the price list that I put out, and that seems to be the information that I could get, the current market. I could not say it was put out, I don't know who puts out the market price list, but we acquire one, there was a market price list put out in 1924, which was $23.00. I have no objection to saying that ever since I have been in business I have been getting a price list from one of the largest companies every spring, and I consider that the market price as long as it is generally maintained. That is the one I referred to, what I called the market price, when I maintain that price list that I receive, our company receives from one of the large factories. I think that market price list which I received this past season from that factory was $1.00 higher than it was in 1923 and 1924. When I received that market price list, and subsequent to that time, I have had no understanding or instruction from anyone, or any agreement with anyone, that that list would be adhered to. No one could give me instructions in that regard. I am not prepared to say whether or not throughout the territory that I am familiar with each one of the fertilizer companies, not only the smaller companies, but also the four larger companies, have adhered to that market price as originally issued in the past season. The market was very firm during the year. You would hear reports that the price was lower here or there, but never of sufficient moment to cause me to meet it. There was by no means no such variation in price this past season as there was in 1924.

[fol. 627] "Q. Now, it is a fact, is it not, Mr. Strobhar, that there has been no change in freight rates in 1924 and 1925, as compared with 1924 shipping season?"

"A. The past shipping season, I think the freight rates remained the same."

Our price list for the spring of 1925, I think it was $1.00 per ton higher than the spring of 1924. Speaking from the standpoint of my company, the Southern Fertilizer & Chemical Company, my primary interest in this proceeding is to get equality. I stated that. That is my direct interest in it. I ship into South Carolina at a disadvantage to my competitors; I have to equalize at Charleston. There has been same price f. o. b. Charleston as f. o. b. Savannah, and if I ship an equal number of miles up into South Carolina, I still net less than the Savannah price, or considerably less than my Savannah prices, although the distance from Savannah may be shorter than from Charleston. There is inequality there.

When I say I want equality, I mean by that uniformity.

"Q. Do you want the rates on a mileage basis?

"A. Yes, uniformity, that is where it affects me directly. Of course, we want our customers to get as low a price as possible.

"Q. But you would like to have the rates determined on a different basis?

"A. It costs me a good deal of money every year on account of inequalities in freight rates, Savannah as compared to other points." (Tes. 872-876.)

Following that reduction by the South Carolina Commission in the rates intrastate in South Carolina, with no change in the rates from Savannah, I labored under rather severe difficulty, and still am; that is what I am complaining about.

I say that is my direct interest in this thing.

[fol. 628] "By Mr. Cotterill:

"Q. May it fairly be said, Mr. Strobhar, so far as you know, it is the point of view of the executive committee of the Association that it is quite important, as soon as possible, to substitute a uniform mileage basis on fertilizer for the present, more or less jumbled hodge-podge of rates that exist?

"A. They are important, very important.

If it could be done by January, it would be in time to help us a great deal.

"Q. More or less reference seems to have been made by an assumed advance in your price in 1925, compared with the list price for 1924. I believe you say that the difference between the price list was $1.00 per ton?

"A. I am quite sure that is right, sir."

The price conditions in 1924 were abnormal. During that period of time, I think I can say that the solvency of the industry was virtually jeopardized. I think one of the largest companies was put into receivership as a direct consequence. Others went in and, others were threatened. So far as I knew, practically every company lost money in operations made an operating loss. Regardless of a comparison between those price conditions in 1924 and the list prices in 1925, you correctly understand that the list prices in 1925 substantially represent the pre-war level of the fertilizer, with the price difference accounted for in transportation costs, except that labor is higher. Bags are higher, and one or two things are higher. The margin, I should say, is no larger, if as large. I think the prices themselves are fairly comparable with pre-war prices. I think a higher transportation cost and certain other added elements to pre-war costs which are still in the industry. That is true, regardless of any difference between 1925 and 1924 prices; no doubt about it.

The Federal Government, through other Departments, has more or less continuously kept itself in touch with the [fol. 629] fertilizer industry with a view of detecting anything which resembles a price-fixing agreement. There has been almost an annual investigation. One of the representatives spent three days with me just a month ago, and a year previous to that they went through my files. It is a fact that the industry is under the constant supervision of various Governmental Departments with the distinct object in view of detecting anything in the nature of a price-fixing agreement, with consequent prosecution, if any agreement of that kind were made. I think some of the large companies are pretty well under observation or direction of the Department of Agriculture; I think so, I don't know, practically all of the time. No prosecutions have been instituted yet; a clean bill of health every time they look at it. (Tes. 876-879.)

Cross-examination:

It is a fact that you take almost any point in Alabama or Georgia, any country station throughout this year, and if you take a price on 10-2-2 fertilizer delivered at the station from any company, you got pretty much the same price to a penny delivered there. I say there was a general market. I do not mean there were no exceptions.

"Q. Well, there was no exception in my case; I am speaking personally on that."

"A. There was a stable market."

"By Mr. Gwathmey:

"Q. Mr. Strobhar, figures have been introduced here showing that the average price of fertilizer in Georgia in 1925 was $31.60 per ton, and in 1924 $27.00 per ton, a difference, or an increase, 1925 over 1924, of $4.60. If your market list price was advanced only a dollar a ton, 1925 over 1924, where did that difference in the amount of increase in cost to the farmers come in.

"A. Suppose we lost $4.00 a ton in operations in 1924?"

I spoke of the dollar as the price list, what we started at, but demoralization took place. The effort to liquidate [fol. 630] the stocks. I did not say that the figure of $1.00 represented the amount of the difference in actual price of the fertilizer, 1925 over 1924. I said at the close of the spring of 1924 to the lowest price any part of the season. Another reason I know that lowered the price, the people had to sell, the banks were forcing them, I presume.

I did not hear the testimony yesterday in behalf of the Southern States Fertilizer Company, but I can imagine what it was; the situation was the same. As to whether the situation with respect to the South Carolina rates was the same in the case of my company as in the case of the Southern States Fertilizer Company: I think it hurts me more so because I have a large percentage of my business that is down in South Carolina, and I had more tonnage than they had, I seemed to be unfortunate in having it in that section where discrimination seems to be greater per ton. There

is, in my opinion, undoubtedly an unjust discrimination existing there, which has resulted in damage to me, and on the other side of Charleston we will find comes into Georgia, passes Savannah at the same rate of freight, that we pay, and it ought to be straightened out as quickly as possible.

"Q. Have you suffered in any way from a like discrimination on account of the Alabama State rates?"

"A. I do not do business in Alabama, that is, personally; my company does not."

"By Mr. McGehee:

"Q. You spoke about the condition of the fertilizer industry and the hard times that they have gone through and I know that that is true. But I just wanted to ask you if that was not a result very largely of extensive sales and unwise credit in the past few years; if that was not one of the factors, inability to collect your money?

"A. I would not say unwise credits, sir, because the credits were wise, but the farmers could not pay. There are millions of dollars that they owe today, and I don't know when it will ever be paid, but we need to help the [fol. 631] farmer all we can, but there have also been serious operating losses." (Tes. 879-82.)

I do considerable business in Georgia. It is not increased proportionately where I have an advantage for equal distance over plants in South Carolina, that I do business in Georgia, or plants in Alabama doing business in Georgia. I just mentioned that in South Carolina. If you are familiar with Cordele, Georgia, I will cite the same rate applies from Charleston to Cordele that is from Savannah to Cordele. I think you can pick out others, so that there is no reciprocity about it, we cannot get into Carolina under that basis. I think there is a small differential there at Vidalia, 25 cents per ton, something like that, a dry mixing plant at Vidalia.

I sell very little in Southwest Georgia; I do not get over there as much as I should. I don't know about Alabama, I believe that was your question. I don't know about Alabama, but I cannot speak of my own knowledge. I do not find where I have had any advantage over South Carolina shipping into Georgia.

The principal concerns that ship from Charleston? Well, in Charleston, two of the large companies, American Agricultural and Virginia-Carolina have factories, but the bulk of the business is done by so-called independent companies, the Planters Fertilizer Mixing Company and Etowah Fertilizer Company, and the Reed Phosphate Company, Maybank Fertilizer Company, Merchants Fertilizer & Phosphate Company, McCole Fertilizer Company, and different mixing plants, two or three or four mixing plants. (Tes. 882-83.)

(Witness excused.)

H. R. Bates was thereupon called as a witness and, having been first duly sworn, testified as follows:

[fol. 632] Direct examination:

My name is H. R. Bates, residence Atlanta, Georgia, manager of the Manufacturing Department of the International Agricultural Corporation. I have engaged in that, or a similar capacity 31 years. The particular company with which I am connected has plants located pretty well throughout the Southeastern States. We are operating, as we call them, 100 per cent plants, 24, and about as many more joint corporations, in which we have a 50 per cent interest. By reason of that diversity of plant operation, the range of my own personal experience in operating management, it may be understood that the facts, as they seem to pertain to our operations, are fairly typical of the industry as a whole.

(Certain statements were thereupon received in evidence and marked "Protestants' Exhibits Nos. 324 and 325, Witness Bates.")

It has been indicated through a preceding witness that the plant foods are three in number. The first of these exhibits, namely, 324, shows on sheet 1, chart 1 in the left-hand brackets, what those plant foods are.

"Q. Opposite that bracket does there appear the more technical description of the commodities which contain those plant foods?"

"A. Those are the three classifications into which we divided our shipments."

In the various consuming territories, by reason of the different agricultural products sought to be produced, the productions of the different kinds of plant foods are different, one territory compared wtih another. I have indicated in the last bracket of chart 1, the approximate division as between the proportions of the plant foods in the mixtures used in the different sections of the country.

Coming down to Chart 2, I have in that chart sought still [fol. 633] further to refine the classification of the chief commodities containing these various plant foods, assigning them by brackets to the chemical descriptions of them.

The ammonia is simply another form of nitrogen. Some states express it as nitrogen, and some ammonia; it is the same for agricultural purposes. Nitrogen is the plant food. The ammonia is simply a first stage in the oxidation of nitrogen on up to nitric nitrogen, which is the only form in which the plant really can take nitrogen as a food. Having shown the principal substances containing these various plant foods and their technical classifications, I have in a general way shown in that Chart 2 the principal sources from which those different materials are obtained.

"Q. Dropping down now to Chart 3, which pertains particularly to Southern Territory, have you sought to set forth the formula employed in the making of a typical or average analysis of a well known and recognized complete fertilizer?"

"A. That is broadly the average of the mixed goods shipped last year, containing the three plant foods."

That formula would be most readily identified by: 10-3-3. That may be, then, known as a 10-3-3 mixture. That means that it contains 10 per cent of available phosphoric acid, 3 per cent ammonia, or equivalent of 2.47 nitrogen, and 3 per cent potash, 3.20. That would then mean that in a ton of mixed fertilizer the preparation of which a formula consisting of 10-3-3 was used, there are those percentages of vailable chemical ingredients.

"By Com. Eastman:

"Q. Can you tell me how it happens that nitrate of soda seems to be the source of ammonia, and also the source of sulphuric acid?

"A. It is used in the manufacture of sulphuric acid, in the process."

Nitrate of soda is used in the manufacture of sulphuric acid as a carrier of oxygen in the process. There is a small [fol. 634] percentage of nitrate of soda used in the manufacture of sulphuric acid; about 4 per cent of the sulphur charge. Irrespective of the smallness of that percentage, it is a curious chemical fact that then the sulphuric acid in turn is later used with the phosphate rock, and then that mixture, mixed with nitrate of soda again. Hydrogen and oxygen are added to the sulphur to produce sulphuric acid.

The fact that Dr. Davis referred quite frequently to sulphur and pyrites in the manufacture of sulphuric acid—doubtless it was not intended by him—there was in that respect an omission to mention the additional and very important source of supply of sulphuric acid as the by-product of copper smelting operations, which operations are located in the so-called Ducktown Basis of Tennessee. (Tes. 884-88.)

"Q. In a substantial way of speaking, may it be said that the port plants, and those immediately adjacent to the ports, more generally employ sulphur and make their own sulphuric acid?

"A. I think I would say that some of them use sulphur, and some of them use pyrites at the ports."

As you go back into the interior, there is a greater percentage of use of by-product acid obtained from the copper smelting operation, by reason of the location and cheaper transportation costs. The principal source of pyrites is Spain. There are some pyrites mines in Virginia, but I don't think they are very profitable, at least. I doubt even if they are being worked. You will find pyrites mines right outside of Atlanta, Georgia, on the same vein, but they are not being worked now, and you will find pyrites mines in Canada and Western Minnesota, but they are not being operated.

If at a given moment the desire were to manufacture a mixture known as 10-3-3 at all manufacturing points in the South, such a mixture could be produced, and would be produced by the use of different materials, perhaps, at each manufacturing point. On other words, it is the ultimate [fol. 635] chemical content which is sought, and may be obtained through the use of various kinds of materials.

At the bottom of this exhibit No. 324, where it says formula of materials—I don't mean by that that the formula contains all of those; that is simply a typical formula. For instance, we might substitute for tankage, a little cottonseed meal, or use some foreign bean meal or nitrogenous substance, any of the materials that are listed above, could be used as a part source of the ammonia supplied by the tankage.

"Q. Would it be necessary to have four elements containing ammonia, or would one be sufficient?"

"A. Well, we would not call that a well-balanced fertilizer, no."

In the composition of this particular formula, we tried to select first a typical formula and second to the selection of materials to be used in making up that formula which would likewise be different. Three per cent ammonia means that in the various materials, in the formula of materials, there are 60 pounds of plant food. There are three units, a unit being 20 pounds. A unit is 1 per cent of a ton. There are three units in the ton of 60 pounds of plant food. That 60 pounds of plant food is contained in that tonnage of nitrate of soda, fish scraps, and sulphate of ammonia, that is in the ton.

"By Mr. Quirk:

"Q. In your Exhibit 324, you show source of supply of cyanimid at Niagara Falls, Ontario. You don't mean by that, that was the only source?"

"A. No, no, there is a foreign cyanimid that comes in, yes. That might have been added there, perhaps just as well added. Cyanimid comes in from Germany, some of it being imported."

There was undertaken in Exhibit 324 and 325 the effort to ascertain the existing transportation costs in the assembly of raw materials and in the distribution of the finished product to 100 miles, of the average mixture, known as 10-3-3, consisting of the average typical ingredients, and a considerable number of representative manufacturing points in the South. I computed a supply of the propor-[fol. 636] tions of the different materials, which at the different manufacturing points would be employed in the making of such mixture as we are dealing with here. (Tes. 888-892.)

On the basis of those representative tonnages, the existing transportation charges were computed by the traffic department. The combined result was expressed in Exhibit 325. In such exhibit a complete separation has been made as between acid phosphate itself, regarding it as a fertilizer, and a 10-3-3 mixture, in which acid phosphate is used, so that in examining the exhibit, an impression may be derived as to the total assembly and distribution cost of acid phosphate or the mixture at these various and numerous different manufacturing points. While the resulting figures vary in considerable measure, the exhibit first establishes an impression that so far as concerns the transportation costs the port plants have an apparent cost advantage. Taken as a whole, and still confining the discussion to this 10-3-3 mixture, it will appear from the exhibit that on the average taking a higher and a lower transportation cost at plants, a figure in the neighborhood of $5.00 will represent something like the general average in an outbound transportation costs throughout the south in the making and distribution of a 10-3-3 mixture at the ports, and something higher at the interior.

By Com. Eastman:

"Q. Now, on Exhibit 325 I notice that at Charlotte, North Carolina, sulphuric acid comes from Columbia, South Carolina—what is that, Columbia?

"A. This is in this particular case, the Royster plant, I presume, in which they ship sulphuric acid from their Columbia plant to their acidulating plant at Charlotte."

They produce the sulphuric acid at Columbia. The freight charge involved in getting the material to Columbia is in there. I understood this to give the freight charge shipping the sulphuric acid from Columbia to Charlotte.

"Mr. Cotterill: I am informed, Mr. Commissioner, that in the case of the item you have mentioned, there was not [fol. 637] included the cost of transportation on sulphur to Columbia, and the computation expressed alone the transportation cost on the acid from Columbia to Charlotte. In that respect, there is an omission.

It so happens that in the case of the Charlotte figure giving the operation of the Royster Company, it was concluded that a cheaper transportation cost could be expressed by the assumed movement of sulphuric acid from Columbia than from Copper Hill, whereas, in the case of Columbia, it is the assumption, say, that the cheaper transportation cost would be produced by the movement of acid from Copper Hill to Columbia.

I did not work up all of these figures; they were worked up by our traffic department. In the making of these computations the effort was made to determine approximately the lowest transportation cost which would be available under the conditions as they exist.

By Com. Eastman:

"Q. Now, you spoke of the lowest cost being at the ports. Does not this show that the cost at Atlanta is lower than at Charleston?

"A. On page 4 it shows the average cost—you mean on the mixed goods?

"Q. Yes, Atlanta $4.86, Charleston appears to be $5.18 on page 2.

"A. I think that is probably due to the fact, I am not a traffic man, Mr. Commissioner, but I think that is probably due to the fact, if I might answer that question, on account of the low acid rate from Copper Hill to Atlanta, which is one of the lowest rates we have, and it works out that way at that particular point. My memory is that rate is about 21/2.

"Q. The lowest cost that you have seems to be at Mobile.

"A. That is probably due to the low sulphur cost, right across from the Texas fields. We get sulphur across there via boat." (Tes. 892-96.)

[fol 638] "Mr. Cotterill: Mr. Commissioner, I am just now informed of an error which I myself made, which probably tends to a little confusion there. It seems that in computing the outbound transportation costs, the exhibit was not based upon a uniform movement of 100 miles, as I had thought it was, but on the contrary was based upon a weighted average distribution from the plants that were used for the purpose of the test. That being true, I rather think that a complete understanding of the exhibit would make it wise to furnish this record with a supplement of those average distances for the outbound movements, which were used in this composition cost; otherwise, it would not easily be possible to make the comparisons which we had in view, and I will undertake to do that."

From my supervision of the management of these various plants, and contact with the industry, I would not say that at the time of the peak movement of fertilizer, such movement badly conflicts with any other peculiarly heavy movement which the railroads at that time are attempting to take care of. I should think the contrary is true; that during the time of the heavy movement of fertilizer is the period when the railroads, perhaps better than any other, can accomodate themselves to that peak movement of fertilizer.

Other than in the case of one or two of the port cities, it has not been my experience that during the fertilizer shipping season the railroads accumulate empty cars for accomodating the fertilizer business, and return them empty to the shipping points; I think they have the cars drifting in as we want them. Other than one or two or such port cities, I do not know of any place at which fertilizer is manufactured and shipped, where it is the practice of the railroads extensively to accumulate and bring in empty cars for the particular purpose of handling that movement, and [fol. 639] then upon the discharge of the lading in those cars, returning them back to that fertilizer shipping point. It is true at certain seasons of the year that as to a substan-

tial percentage of cars used by the fertilizer companies in the shipping of fertilizer, that percentage of cars has come first to the fertilizer plant under lading with materials depending also upon market conditions. There are several factors that would govern that. It depends upon how a large concern has bought its materials, what deliveries they have requested. They always like to have, I think, some deliveries in the spring season, so as to have those cars coming in. It takes that much burden off the railroads. It would appear from exhibits introduced by me that in some cases there is used sand in a given amount in the making up of a mixture. To explain the function of sand when so used: in figuring a formula, when you start out to use certain materials, and obtain a certain analysis, we will say that of the ten it takes 1,980 pounds of the various materials to give you the pounds of plant food to correspond to a given grade, percentage grade, like a 10-3-3, then the balance of that ton is made up usually from filler sand, or some other material.

"Q. Now, when you use the term "filler" in that sense, you mean the artificial addition of a non-fertilizing substance for the express purpose?

"A. Non-deleterious substance, the State calls it.

"Q. For the express purpose of regulating the percentage of chemical content to the total number of pounds in the ton?

"A. That is correct."

When so used the term "filler" is to be understood in that particular way, as a make-weight. The extent of its use, will vary some with the grade of the mixture. Under any circumstances, the proportion of its use in that way is comparatively small. As to whether it is a practice which [fol. 640] is to a substantial extent diminishing as time goes on: I think in last three years the average grade shipped is probably given from a 10-2-2, to a 10-3-3, and using the same materials now that were being used then, it would of course decrease proportionately the amount of filler.

"Q. Now, the term "filler" in a more popular sense, apparently is what leads to the confusion about it, and goes to the question asked by the Commissioner. When you are

speaking of a mixture of 10-3-3, you mean a percentage of what?

"A. Let me answer your question this way. When I speak of a 10-3-3, as a 10-3-3, I mean that in that compound there are 320 pounds of plant food, and the 320 pounds of plant food are derived from these various materials. I could figure out a formula and answer his question and show him why we speak of it as 3 per cent.

"Q. Yes, just one second.

"A. I will try to answer that question, the percentage, 10 per cent available phosphoric acid means that in a ton there will be 200 pounds of available phosphoric acid. Now, if the product that I use to get that 200 pounds itself contains 16 per cent, then I will use 1,250 pounds, of 62½ per cent by weight of the ton, but I will have 10 units—always think of units as present. One unit is 1 per cent of 20 pounds; 10 units would be 200 pounds, and 1,250 pounds of acid phosphate analyzing 16 per cent gives me the 200 pounds, or 10 per cent. Do I make that clear?

"By Com. Eastman:

"Q. 200 pounds of what?

"A. Available phosphoric acid a ton." (Tes. 896-901.)

The average analysis of nitrate of soda is usually 18.8 per cent ammonia; 376 pounds of plant food. That would seem to mean that in a ton of nitrate of soda, that it has 300 and some odd number of pounds of available plant food.

The entire bulk of that ton of nitrate of soda goes into the mixture of fertilizer, but there is only that percentage of its bulk which consists of plant food. The remainder is Sodium oxide, called "carrier." It is not something which is added to the product by anybody; nature put it there. It is not something which is within the control of anybody. It can be extracted.

[fol. 641] "Q. Would that simply result in a chemically pure nitrogen?

"A. You could not mix the pure product, you would still have nitrate of soda there combined with it."

In actual practice there is no confusion about this subject in the trade itself. When persons buy, they buy on analysis. They know that in the given ton there is a certain percentage of each of those plant foods. The State of Alabama makes you print the number of pounds of plant food on the bag, in addition to the percentages. It is only in the non-technical circle that amusement seems to be furnished by any reference to the matter of "filler" at all. (Tes. 901-903.)

"By Mr. Roberts:

"Q. In your chart No. 2, mineral ammonia, you have nitrate of soda, sulphate of ammonia and cyanimid. In the chart No. 3, you show in this 10-3-3; 7.5 per cent. of ammonia, sulphate, and 2.5 per cent. of nitrate of soda in weight. Does that mean that 7.5 per cent. of sulphate of ammonia answers the purpose of 2.5 per cent. of nitrate of soda?

"A. That means that in a ton there are 150 pounds of sulphate of ammonia and 50 pounds of soda. It is per cent. of a ton."

Cyanimid could go, some call it organic, and some call it mineral. You can figure it either way you want to. Certain States have permitted you to figure it as an organic ammonia, but the quantity that you can use is so small per ton that we left it out of our typical formula. The quantity of cyanimid that you can use per ton is small because its action is heating; if you use nitrate of soda it will throw off the ammonia, or it would make your goods so hot at the time of mixture that they would cake in the vats. They would not sour; they would just get hard; set up. You would use considerably more sulphate of ammonia in making up a ton than you could of cyanimid. Well, there is about 550,000 tons of cyanimid made in this country, and I don't suppose there is over 30,000 being made at Niagara Falls today, and a good bit of that is going to some other use than the fertilizer industry.

[fol. 642] "Q. You say there is 55,000 tons of cyanimid?

"A. Sulphate of ammonia, made in this country today."

Cyanimid is imported, not in large quantities, however. I don't think, speaking for our mills, we have not bought a pound of cyanimid this year are not going to buy any; we have quit using it. We have not bought a pound of cyanmid for these mixtures for this year. (Tes. 903-905.)

Cross-examination:

"By Mr. Gwathmey:

"Q. Doctor, does not the heavy movement of fertilizer take place from the port cities, such as Charleston, Savannah, Wilmington, Norfolk, etc.?

"A. I would think they are the largest centers, yes."

The materials at those port cities are brought in by water.

"Q. On your Exhibit No. 325, do these compilations purport to reflect the actual manner in which you do business, or are they simply selected for the purpose of drawing this illustration?

"A. In the case of our plants, these are as near as we can get at it the actual way these goods will be made this year."

Taking Norfolk, Virginia, the first point shown. That phosphate rock from Royster, Florida, and the sulphur from Gulf Hill, Texas, would move in by water. I do not know whether they are water rates or rail rates?

"Mr. Gwathmey: They are the water rates.

"Mr. Cotterill: I think they are.

"Mr. Dashiell: Sulphur from Gulf Hill, Texas, to Norfolk, Virginia, moves by rail from Gulf Hill to Galveston, and by steamer from Galveston to Norfolk.

"Mr. McGehee: What is the distance of the rail movement?

"Mr. Dashiell: I don't know exactly, something like 25 [fol. 643] or 30 miles; I think it takes $2.15 to take it from the mines to put it in the steamer. The phosphate rock moving from Royster, Florida, would move by rail from Royster to Tampa, or Port Tampa, the rail rate if $1.13, which includes placing the rock into the steamer, and then the steamer movement from Tampa or Port Tampa to Norfolk.

"Mr. Gwathmey: Then, Mr. Dashiell, the rates shown on exhibit purporting to be the actual transportation, include the water rates and the rail rates?

"Mr. Dashiell: That is true, the actual charges that we paid, which is much lower than the all-rail rate, of course."

By Mr. Gwathmey:

"Q. Doctor, getting back a moment to your exhibit 325, I notice that taking Charlotte, for instance, supply of sulphuric acid obtained from Columbia, the rate shown is $2.14. When you get over to August-, just across the river from Columbia, and from which, naturally, the rate on sulphuric acid would be considerably less than the rate to Charlotte, you show that you get your supply of sulphuric acid from Copper Hill, and pay a rate of $3.50.

"A. We would love to get it on the lower rate."

We get our acid for use at August from Copper Hill instead of Columbia as there is none there to get. We get our acid at Columbia for use at Charlotte, because Royster makes it there; it is Royster's acid.

As to why we don't supply our Augusta plant from our Columbia stock, just as we apparently supply our Charlotte plant from Columbia stock: they don't make it, they don't have enough.

It is a different company. As I say, we would love to buyt it from them at that price. They are different companies.

"Q. Now, with reference to your production at Charlotte, this exhibit shows that out of the total transportation cost, inbound and outbound, of $5.86—what is that average [fol. 644] inbound cost per ton in cents—here is a figure indicating a total freight charge for material, $396.04, and of that $396.04, $215.71 is made up by your charge on phosphate rock and sulphuric acid, is it not?

"A. Made up of the phosphate rock and sulphuric acid that went into the making of 1,250 pounds of acid phosphate, that went into the ton of 10-3-3." (Tes. 905-909.)

Indirectly, that figure of $215.71 represents transportation costs on phosphate rock and sulphuric acid. I do not

know if the rates on either one of those commodities are involved here in any way.

On my exhibit, page 3, illustrating Augusta, Georgia, the source of the filler is given as Hephzibah; that is a little place just outside of Augusta.

By Mr. Mohr:

"Q. On the first page of Exhibit 325, Doctor, you show there fish scraps from Norfolk, two and a half tons, 40 cents; that extension should be $1.00 instead of $10.00, should it not?

"The Witness: If it is an error, they will correct it."

I show there 100 pounds of ingredients, the calculation should not be based on 90 tons; we have to pay freight on filler. Our filler is obtained locally in some instances, but not right at the place; we have to pay freight on it.

"Q. Where the filler is obtained locally, that is indicated in the exhibit, is it?

"A. No, the freight is shown on it here, filler from Gilbert is $1.26.

"Q. Now, taking the item of tankage on that page, Montgomery—would you say that the tankage in the mixture of fertilizer for Montgomery all came from Carrollville, Wisconsin, or from points that Carrollville, Wisconsin, would be representative of?

[fol. 645] "A. It is largely a deliberate cost of your unit of ammonia."

I can answer your question this way. The State of Alabama has passed a rule that if you use filler in your goods you must so print it on the bags. That forces the manufacturer to go out and buy a lower grade product, so that he can say that he has not used any filler. In this particular instance I imagine they have gone to Carrollville to get 7 per cent tankage instead of 10. Now, that is what they call "constructive" legislation. I think that this is a fair showing of the average freight charge on the 5½ net ton of tankage; it is true in the plants manufacturing fertilizer in the States of Alabama and Tennessee. In this particular case, I believe that the Montgomery plant was compelled to go

to Wisconsin to get the kind of tankage in all cases that they needed. This would be representative of 1925, I take it. We are transporting lower grade materials than that, I will answer your question still farther, and paying more freight on it. The origin points on the tankage used in this exhibit, I would say were Chicago, Carrollville, and Norfolk, Virginia. Cincinnati, and Southern Ports, for foreign nitrogenous tankage, like Charleston and Jacksonville. Now, I don't think we have in this exhibit considered that we get any tankage from Louisville, because the quantity is small. You will have to go to the centers where the tankage is produced in quantities, if you are going to have an exhibit that will be of some value. You cannot pick out the lowest point. I might have a factory in Montgomery, and have a little soap works alongside of me, a mile away, and I could not use that freight rate.

"Q. I think you have taken the most remote point, Carrollville, Wisconsin.

"A. Well, where is there much tankage produced in the South?

"Q. You just mentioned quite a number of points nearer than Carrollville, Wisconsin, and lower freight rates.

[fol. 646] "A. Yes, but we have got a particular object in going to that place, forced to go to that place."

In order to get a lower grade material. We don't get it all from that point. I would say in this particular case it probably represents all of the tankage Royster gets, going for use in this Montgomery factory.

"Q. Are you in position to say that all that Royster uses, that approximately all that Royster will use at Montgomery, will come from Carrollville?

"A. The only reason they got it is because we could not get there first and get it."

"Q. Now, there is another mathematical calculation that strikes me, that seems inaccurate, on this page 2. You say, or show nitrate of soda, Spartanburg from Savannah $7.50 a net ton?

"A. No, that is tons.

"A. (Interrupting.) $3.83 is the freight rate.

"Q. $3.83 is the freight rate, and the freight charges $9.58. That should be about $24.00, should it not?

"A. I should say it should, yes. Somebody slipped a cog." (Tes. 909-914.)

On the next page, Hartsville, South Carolina, sulphuric of ammonia, and another calculation from Steelton, Pennsylvania, 7½ net ton, freight rate $5.79, extension $58.63. That should be $43.00.

"Q. Now, is there any reason why, in the case of Montgomery, which point seemingly elects to get its acid phosphate, or make its acid phosphate out of rock and sulphuric acid that came from Royster, Florida, and Copper Hill, should be charged on the acid phosphate $3.91 per ton freight rate, when Mobile seemingly gets its phosphate rock from Mount Pleasant at $3.82 rate, whereas, if Montgomery would elect to obtain its material from the Mount Pleasant district, the freight charge would be less.

[fol. 647] "A. I presume Royster has to get its rock where it has its own mines."

Some other fertilizer factory may be differently situated, and the result on the exhibit would have been different had I used different fertilizer factories. As to the difference of the cost of the rock entering into that I don't think there is very much difference in the market price between the 75 Tennessee rock from Mount Pleasant delivered to Montgomery and 75 from Florida, basing it on the basing mine prices, F. O. B. mines, at either point. That is delivered at Montgomery.

"Com. Eastman: Mr. Cotterill, are the freight rates on the inbound materials at issue in this case to any extent?

"Mr. Cotterill: Oh, yes; includes all inbound material other than rock and acid."

By Mr. McGehee:

"Q. Dr. Bates, you recall that Dr. Davis gave the number of fertilizer plants located in the State of Georgia. I don't know whether you heard him or not.

"A. I do not remember what that number was. I remember his saying 800 and something in the country."

Taking the mixing plant as distinguished from the manufacturing plants like those of Royster and our company. From these mixing plants located throughout the State of Georgia and the State of Alabama, for example, I would not say that is entirely true that practically their entire product of completed fertilizer moves out by wagon, and not by railroad. I would say that probably as much as 50 per cent. was wagon deliveries. We have a number of those dry mixing plants. That is true of those. I think that mostly Florida goes through warehousing, they are still maintaining warehouses down there. We have got a plant at Jacksonville, Florida. It is not on there for Jacksonville is a dry mixing plant.

[fol. 648] I have made no study of those cars that moved out to country stations or what moves back in them when they are made empty. My replies in that connection to our counsel were made without any particular study of the situation.

Referring to your Exhibit 324, chart 3. On the 10-3-3 formula, you could use cottonseed meal for part of the ammonia content in substitution for one of the other articles shown here. No reason why it could not be used.

If we were using cottonseed meal, I don't think there would be any more than 50 pounds to the ton. It would be 2½ per cent per ton by weight.

"Q. And what per cent of ammonia would that be?

"A. Well, the 50 pounds of cottonseed meal at 7 per cent., would supply 3½ pounds, it would give you about 15 points out of your three.

"Q. I wanted to see the corresponding figures, what you show there, 10 per cent, available from tankage, what would be the figure there with reference to cottonseed meal, of 50 pounds?

"A. You mean, where we show 10 per cent. ammonia? Well, it would be 7 per cent. ammonia." (Tes. 914-918.)

That data, as I understand it, was prepared by the various traffic departments of the various companies interested, simply using their conditions to fit the formula shown on bottom of chart 3. In one of these cases headed Swift &

Company, illustrating Atlanta, that indicates that there are various companies represented at these several points. (Tes. 919.)

[fol. 649] (Witness excused.)

C. A. Butt was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

(Statement:) My name is C. A. Butt; Residence, Atlanta, Georgia; chief chemist, International Agricultural Corporation.

My principal duties are the analysis of fertilizer materials and mixtures, chemical analysis and control in some departments of the process involved. I am pretty generally familiar with the chemical composition and properties of the various kinds of materials which are used in the making of fertilizer.

"Q. At the former hearing of this case it was intimated as a possible contention of the carriers, that in some way, or in some measure, the transportation of acid phosphate in box cars tended to rapid deterioration of the equipment. For the purpose of dealing with that question, have you prepared yourself to testify specifically concerning the variety of conditions, and chemical reactions, if any, to which the freight car equipment of the carriers would be subjected by the transportation of acid phosphate?

"A. Yes, sir."

In its normal condition acid phosphate is a fairly dry substance, carrying from 8 to 10 per cent moisture. That is percentage of moisture by weight.

That degree of moisture would be susceptible to the sense of touch if you compared it relative to drier substances that you had to compare with it. If it be assumed that a carload of normally dry acid phosphate be transported, the lading then discharged and some of the product remains in the crevices in the corners of the car, there is no noticeable

chemical effect upon the decay of the car. The wood might absorb, under certain conditions, a portion of the soluble [fol. 650] phosphate. When I say under certain conditions, I am not assuming a normally dry mixture. What I have reference to is a higher degree of moisture than would be normally.

If shipped from the plant, the percentage of moisture in acid phosphate would not be such as to cause any chemical effect on the car. It would have to come in contact with moisture in the course of transit. Assuming, then, that for some unfortuitous reason, whether due to negligence or otherwise, the contents of that car had become subjected to an extraordinary degree of contact with moisture, there might be some chemical effect upon the woodwork of the interior of the car; it would be a small absorption of the soluble phosphate by the wood. That absorption by itself, even with the extraordinary conditions I have described, would not be sufficient to be noticeable upon the examination of the car.

I took borings from one car which had previously been loaded with bulk acid phosphate. I did not accumulate and save those borings. I analysed the boring and found .08 per cent of P_2O_5 in the wood. Even under those extraordinary conditions that trace of phosphoric acid, absorbed by the woodwork of the car, would not disappear as a consequence of drying; it would remain for a considerable length of time. In that form it would not deteriorate the car itself; it would not cause any noticeable pulverizing of the woodwork. The damage to the car as such, if any, under those extraordinary conditions is not perceptible. (Tes. 920-924.)

It is simply that there is a trace of phosphoric acid in the outer surface of the wood. It would not materially tend to lessen the life or usability of the car.

It will not contaminate other articles thereafter placed in the car, unless the car gets wet afterwards from some outside cause.

There is no other material that I recall having sufficient [fol. 651] moisture to coat the surface of the woodwork with the material. Let me make one exception. Acid fish scrap carries 30 to 40 per cent moisture, and that will coat the

surface of the wood with a soluble portion of the material. In the unloading of nitrate of soda, there would not be left in the car any such substance in amount as could come in contact with other freight. All other materials that I know of would be taken completely from the car. With the possible exception of the conditions affecting an unusual saturation of acid phosphate, there could be no direct contact with later freight, which could damage it.

Taking the finished fertilizer—in ordinary run of mixtures, the opportunity of direct contact would not be there; that is always shipped in bags, and it has no chance to be left in the car.

That stuff comes through the bags a little, not perceptibly, as the bag is filled, it usually drops off. There might be some noticeable dust that would fly from a bag when it is filled, but in trucking around, putting it into the car, there is not apt to be any very considerable amount of fertilizer dusting out of the bags; if there were, we would have trouble with short weight. In the manufacture of fertilizer, one of the initial processes is what is known as acidulation. That consists of fuming, or mixture of the sulphuric acid and the ground phosphate rock. In the initial stages of that mixing, there is generated a rather pungent fume. One present in the vicinity of a fertilizer plant at that time could detect it, in and around the plant. Likewise, in the burning of sulphur for the purpose of making acid, in and around the plant there is usually a leakage that is noticeable. There are also one or two fertilizer materials used in relatively small volume, which possess a degree of odor which is very noticeable and characteristic.

Wet fish is really the worst material that we handle.

[fol. 652] Peruvian guano has a noticeable odor.

The use of both that fish, and that guano, is almost very small, compared with other uses. I am not prepared to give the relative amount of the different materials that I use. I know that it is used in small quantities. Other than that fish and the guano to which I referred, I know of no other material possessed of such a strong and pungent and permeating odor as would endure in the car for any appreciable length of time after it is unloaded. Other than the one or two articles which I have named, and which are not fre-

quently used, it is my testimony that the resultant odors left in the car fast disappear after unloading, and could not contaminate other freight, provided the freight is not loaded immediately after the fertilizer is unloaded. They have disappeared in a short time.

An exception should be made in the case of virtually all I have said as to sugar, and I will say sugar is under the peculiar disadvantage that it has a tendency to absorb even faint odors. There are other materials that would give odor sufficient to injure sugar. Take paint and tar, and creosote. (Tes. 924-928.)

In the case of sugar it has a tendency to the absorption of odors of any rather pungent character that are left in the car. That is to be regarded as a disadvantage of sugar, not to the particular incident surrounding the shipment of fertilizer. I made a particular test for the purpose of determining if there was some conflict between the movement of watermelons and acid phosphate. I secured acid phosphate from the pile in the factory, just as it is made, and after it is cured and piled out on the floor in the laboratory at East Point, purchased a watermelon and put it in the acid phosphate and on top of it. That was the 15th of August, and after two weeks it was removed and no noticeable injury; no injury was apparent. I preserved the melon and have it with you.

[fol. 653]

In the commencement of my studies on this question, the carriers were invited, all parties, to make these studies, and to cooperate in the making of them. I understand they declined the invitation.

(The witness thereupon produced a watermelon, to which his testimony referred.)

"Q. Now, I did not quite complete one line of thought. I was speaking of the odors in and around the fertilizer plant during the processes or some of the processes in the making of fertilizer. It is your understanding that it is due to the fact that many people come within the vicinity of fertilizer plants and get the impression that fertilizer itself is rather strong in its odors simply by reason of their coming in contact with the plants at the time when certain processes are being carried out?

"A. Many get that idea."

As a matter of fact, with the single exception of such mixtures as do contain this fish scrap, fertilizer is, as prescribed in commerce, practically an odorless commodity. I have brought samples here for the purpose of enabling any person to test the accuracy of that conclusion. I have here samples of fertilizer of various kinds that are right in the room, even here being described.

If anybody is inclined to dispute the conclusion that it is practically odorless commodity in all instances except where a small percentage of fish scrap is used, the samples are here available, of the test and conclusion.

(The witness thereupon produced various bottles containing samples of fertilizer.)

I have made inquiry to some extent in the other industries, some other industry, for the purpose of determining what experiences, if any, they have had in the way of dam- [fol. 654] age to their goods resulting from the prior shipment of fertilizer or its materials. In attempting an investigation, I first visited a few cotton goods manufacturers, wholesale grocers, produce merchants, in search of some instance of injury, and failed to find any. That is as far as I carried that investigation. I have been with the International in this capacity 14 years. I don't recall that during or immediately after the Railroad Administration period various plaints were presented to the carriers on account of the alleged damage to freight growing out of the prior shipment of fertilizer in the equipment. I don't remember being asked by the railroads to assist them in refuting that claim, and the making of the tests, for the purpose of establishing that no such damage could occur. (Tes. 928-932.)

Cross-examination.

"By Mr. McGehee:

"Q. Doctor, do you think a man could go out and take any of the 10-2-2, or 10-3-3, if he were to go out in the field today, and spend a day distributing guano, or fertilizer, and you were to meet him on the street, do you think you would have any difficulty in determining what he had been doing all day?

"A. I believe you would get an odor from the dust that would be in his clothes."

That vial you hand me is a brand called 9-2-3. That has very little odor.

There are manufacturers who tell citizens in order to sell them fertilizer, it was better because of the very pungent odor it has got; there are fewer now than there were.

"By Mr. Gwathmey:

"Q. Doctor, with reference to the acid phosphate in the car injuring the freight that may be shipped thereafter, if some of the acid phosphate gets into the crevices of the car, and is not cleared out, and subsequently moisture should get in there, it will become damp or wet. Would not that [fol. 655] release the character of the spirits in the acid phosphate, and if it should come in contact with a sack containing flour or meal or anything of that sort, damage it?

"A. The acid phosphate in fact is very mild. It might be termed corrosive, but that property is very mild, as demonstrated by the watermelon test."

I would say that if the bag of flour got wet with the acid phosphate, it would take up the soluble phosphate, but I don't believe it would damage to any extent the flour or the bags.

I don't know that carriers clean the cars after shipping fertilizer before it is taken out of the fertilizer movement. I do not know whether they do or not.

"By Mr. Menzies:

"Q. Doctor, would you have been willing to prove to the satisfaction of our watermelon growers, that watermelon shipped from the fields in cars, in cars used for fertilizer, could do not harm. We get hundreds of thousands of claims for alleged damage, and if you can prove that no damage is done, we will be willing to give you a pass to go over our lines, the I. C. C. permitting, to look into the matter and prove that fact to the melon growers; would you do that?

"A. I could not attempt to prove that there is no damage. That damage might occur from other things besides fertilizer. We do not know whether it was fertilizer or not, do we?"

That is the claim on the part of the melon shippers.

So far as concerns damage to the melon, if any, as a result of its shipment in a car which has previously contained fertilizer, I feel positive that no possible damage to the melon occurs by reason of that fact. I would like to exhibit this watermelon. Now, this side of the watermelon was turned down, and rested on the acid phosphate (indicating). That melon was never shipped. That melon was grown near Hapeville, Georgia; I put that arrow on there pointing to the place. There is no effect whatever. The friction in a [fol. 656] car will rot away melon, but I can see no possibility of fertilizer coming into a watermelon enough to damage it.

I have no record as to how many times the particular car which I examined and made borings of was loaded with fertilizer. I know that it was just emptied of bulk acid phosphate.

I made the borings in the floor in each end. I took four borings; two at each end. Near the center at the ends.

"Q. You do not know what length of time it had been since the car was loaded with fertilizer, if it was ever loaded with fertilizer?

"A. I know it had been loaded with bulk acid phosphate, but not mixed fertilizer; I don't know about that." (Tes. 932 6.)

If the car had been loaded with fertilizer, or if the car had been loaded with fertilizer a number of times just prior to my examination, it is possible that a quite different result would have been obtained.

"Q. Now, you stated in answer to counsel's question, that the odors in a car disappeared after a short time, but you did not state that they disappeared within the normal time within which a car ordinarily is reloaded with freight. I wish you would be more specific in your answer and state just when the odors do cease, in your opinion.

"A. We have no way to tell how long the odor would persist."

If the car had been loaded several consecutive times with fertilizer, that odor might be there four or five days, but we could not think it would be perceptible after 24 hours. That is an opinion from an investigation that I have made on wet fish scrap. A car was received and unloaded and washed out, and you could still smell fish odor. In this instance the car had been washed out, and the fish odor persisted for a full 24 hours.

In an instance where a car is loaded with fertilizer, manufactured fertilizer, on several occasions, and been kept in [fol. 657] the fertilizer service, shuttling back and forth, and is not cleaned, the length of time the odor would persist in the car depends on the kind of fertilizer. There are some brands of fertilizer that the odor would not persist 24 hours. Leaving out fish scrap, and confining my statement and remarks to fertilizer, completed fertilizer, the odor would persist at least 24 hours, or maybe 48.

I do not know whether flour in sacks would absorb the odor from the fertilizer in cases where a car had been used twice, say in succession, for commercial fertilizer of the ordinary kind.

I would say that paint inside of sealed tin cans, would not give off an odor. Paint in barrels would have some odor. It will be just as penetrating as fertilizer in the case of sugar, in my judgment. I have made no tests on that. I was informed by a former wholesale grocer. I have no samples here of odor as completed fertilizer. No mixture; we have the materials. I would consider acid phosphate, ammonium sulphate, and nitrate of soda, and muriate of potash, practically odorless. All the other samples which you have here have odors in varying degrees.

I have here eleven samples.

"Q. Four of which are odorless.

"A. Eleven." (Tes. 936-940.)

Cyanimid has an odor; a little odor. Sulphate of ammonia has a little odor.

"Q. Nitrate of soda?

"A. All materials have an odor—but in some of them the odor is very little."

I have a sample of cyanimid there. It came to the factory at East Point from Niagara Falls, and it is taken from stock in the factory.

It is not a part of my duties, as a chemist for the Inter- [fol. 658] national Agricultural Corporation, especially to go around and inspect cars loaded with fertilizer, or cars that have been loaded with fertilizer and ascertain the condition of those cars. My work is in the laboratory and in the plant at certain times. I have seen cars loaded with fertilizer.

My duties have been such as that I had had occasion to go out and examine cars.

"Q. After they have been used for fertilizer or fertilizer materials, to see what the condition of the car is, how much of the fertilizer may have been left in the car, how much may have gotten in cracks and crevices, and how much odor there may have been left around there?

"A. I have examined those things after the investigation began on this case."

For the purpose of this case. We examined six or eight cars at the East Point factory. Outside of this examination of six or eight cars, I get my testimony as based upon my expert general knowledge as a chemist.

There would be a small difference in the condition of a car that moved during the wet season and during the dry season; greater saturation.

Animal tankage is rather high in pungency of odor. So is the fish.

Other than those, it is my testimony that while there is a perceptible odor to be derived from opening a closed jar of these other materials, that such odor as there is speedily disappears when the product has been unloaded from a car, unless it be some such product as contains within it the fish scrap or animal tankage. In the case of a product in which those two materials are used, the pungency of odor will be more noticeable, and will remain longer. As to certain kinds of food, such as sugar, and

conceivably flour, those kinds of foodstuff have the property of absorbing odors of any pronounced kind, and not [fol. 659] alone of fertilizers.

Reference was made to eleven samples, and of the eleven samples, two of them consist of fish scrap; one of animal tankage; one consists of cyanimid; and one consists of a complete mixture of 9-2-3.

This 9-2-3 was made in our own factory in Americus, and they have used 25 pounds of fish scrap in this particular sample. In other words, in the case of that particular sample mixture of 9-2-3, that is a specimen of a mixture in which fish scrap has been used. It is that which gives it the more than ordinary pungency of odor.

I have no knowledge as to any instance in which the railroads have solicited from the fertilizer factories helpful suggestions and information which would tend to refute unwarranted claims based upon an assumption of damage to other freight by fertilizer, which in my judgment and experience could not have occurred.

If the railroads wish to do so, the facilities that my company has, and the Association, are available to them for that purpose.

"By Mr. Mohr:

"Q. Is it not a fact that the preponderance of fertilizer contains fish scrap?

"A. I could not hardly testify on that." (Tes. 940-45.)

Fish scrap has been used in some of the fertilizer for years.

From my knowledge, I would say that a small percentage of the tonnage of commercial fertilizer used in the United States contains fish scraps. Confining it to the South, I have no comparative data on the amount of fish scrap used.

I could give you my opinion, and my information is that animal tankage is a small percentage of the total tonnage.

"By Mr. Mohr:

"Q. That is a very small proportion of the tonnage of fertilizer manufactured in the South contains fish scrap or animal tankage; that is your judgment?

[fol. 660] "A. Not a very small; I would say a small percentage would.

"Q. About 20 per cent., in your judgment?

"A. No, I would not confine myself to percentages; I would be afraid to say. I have just opinions on the subject." (Tes. 945-6.)

(Witness excused.)

H. R. Bates was thereupon recalled and, having been previously duly sworn, testified further as follows:

From my observation as to the use of sulphate of ammonia, it is being applied broadcast. It is being used as a direct fertilizer; a top dressing, as well as a mixture.

Cyanimid cannot be used as a direct fertilizer, because it is too costly; got about 44 per cent of lime in it.

I think as a general thing, practically all of the manufacturers are putting as much—they are spreading the country's production of fish scrap through practically the entire production of mixed fertilizers; it is about one per cent of the total production of mixed goods. The percentage of fish scrap in a particular fertilizer, finished product, by that indicated in this Exhibit is that or less, and no more. That is also true of animal tankage. That is, where the goods are manufactured. Let me qualify that if you will. Where the goods are manufactured, the formula usually indicates a specific ratio of animal ammonia, and organic ammonia, and the quantities of tankage that are used, are governed by that ratio. That ratio there happens to be on 20-20. I would say that probably 70 per cent of all the fertilizer sold in the South was mixed ammoniate goods carrying a substantial quantity of tankage either in the form of packing house tankage of nitrogenous manure, and a small quantity of fish, and having a distinctive fertilizer odor. (Tes. 946-8.)

(Witness excused.)

T. A. Bosley was thereupon called as a witness and, hav-
[fol. 661] ing been first duly sworn, testified as follows:

Direct examination:

My name is T. A. Bosley, traffic manager, Virginia Carolina Chemical Company, Richmond, Virginia. I am a member of the traffic committee of the National Fertilizer Association. I have been engaged in traffic work, connected with fertilizer, for 25 years. For convenience, I have condensed my remarks concerning certain series of exhibits which I intend to introduce. There are 89 of those exhibits in number.

(The statements were thereupon received in evidence, and marked "Protestants' Exhibits Nos. 326 to 414, inclusive, Witness Bosley.")

326 to 391 is the first set, and 392 to 414 is the second set.

By reason of the fact that the traffic test covering fertilizer has been made, not so much importance is to be attached to the comparison between various existing and proposed fertilizer rates. However, in the proceedings, the carriers presented numerous exhibits in which such comparisons were made. It seems at least justifiable to present in this record other comparisons, if for no other reason, that the two sets of exhibits will enable the Commission, if it so desire, to locate the higher and lower rate areas. In a series of exhibits about to be referred to in more detail, such study has been made, including corrections of some of the carriers' exhibits, where such corrections have been most obviously needed.

As a consequence of the studies which have been devoted to this case, we and my associates have prepared a single, and another scale, to be known as joint line scale, which is laid before the Commission and the other parties as representing the rate levels which are sought to be approved. That is my Exhibit No. 326. (Tes. 949-50.)

This Exhibit 326 shows a comparison of the mileage scale proposed by the Traffic Committee of the National Fer-
[fol. 662] tilizer Association with that proposed by the carriers and those prescribed by the Interstate Commerce Commission in the cases cited.

First is shown the proposed scale of the National Fertilizer Association Traffic Committee for uniform application between Southern points, both on interstate and intrastate traffic, single and joint line; then the scales proposed by the carriers, together with per ton mile and per car mile revenue for both. The scale we present was adopted by the Committee after an exhaustive study of the prevailing scales in the South as being the most reasonable and consistently graded one for uniform application in the South under present conditions.

The single line (Trunk Line) scale starts with 80 cents for 5 miles and progresses 10 cents for each 5-mile block up to 25 miles; 5 cents for each 5-mile block up to 100 miles; 10 cents for each 10-mile block up to 260 miles; 10 cents for each 20-mile block up to 500 miles; 10 cents for each 25-mile block up to 800 miles, and 5 cents for each 25-mile block up to 1,000 miles.

The joint line (Trunk Lines) scale is made the following differentials over the single line scale: 30 cents 10 miles to 150 miles; 20 cents 160 miles to 340 miles; 10 cents 350 miles to 500 miles, and the same as the single line scale over 500 miles. These rates are per net ton.

[fol. 663] This is based on the theory that the joint line differential should decrease with increased distance, which we believe is proper.

These scales for distance up to 500 miles are the same as those recently adopted by the Alabama Public Service Commission after exhaustive investigation and comprehensive report in their Docket 4136.

Next is shown the so-called Royster Scale, single and joint line. This scale was prescribed by the Interstate Commerce Commission in the F. S. Royster Guano Co. vs. A. C. L. Railroad et al., Docket 7573, 50 I. C. C. 34, for application from Norfolk to North Carolina points on the A. C. L., N. S., S. A. L. and Southern Railways; in the Freight Adjustment Steering Committee, of Charleston, S. C., vs. A. C. L. Railroad et al., Docket 8627, 53 I. C. C. 506, for application from Charleston, S. C., to North Carolina points on the A. C. L., N. S., S. A. L., and Southern Railways; also the Traffic Department of the Goldsboro (N. C.) Chamber of Commerce vs. A. C. L. Railroad et al., Docket 14810, 91 I. C. C. 315, for application from Wilmington,

N. C., to North Carolina points on the same lines on interstate traffic.

Scales in the first two cases have been advanced and reduced in accord with General Order 28, Ex Parte 74 and reduced rates of 1922.

This scale extended to 1,000 miles is being proposed by the carriers for uniform application in the South, both on intrastate and interstate traffic. It is true that this scale has been prescribed by the Commission in three proceedings, however, in the first two mentioned cases, the main issue involved was one of discrimination and undue prejudice against Norfolk and Charleston and in favor of North Carolina manufacturing points from which the scale pre- [fol. 664] scribed by the North Carolina Corporation Commission applied. The scale prescribed by the Commission was the same as then applicable between North Carolina points on intrastate traffic and as prescribed by the North Carolina Corporation Commission, this placing the rates from Norfolk and Charleston to North Carolina points on the same relative basis as rates between points in North Carolina, and removing the undue prejudice complained of. In the Goldsboro Case, as we understand it, the main issue involved was what constituted interstate or import traffic as distinguished from intrastate traffic from Wilmington to North Carolina points and whether or not the interstate or intrastate rates were applicable.

We desire to call attention to the fact that in the original scale prescribed by the Commission in the Royster and Charleston cases the joint haul rates were made a differential of 20 cents over the single line rates for all distances. The increases of 1918-1920 and reduction of 1922 results in the joint scale being thrown out of its proper relation to the single line scale. As instances the following mileage group rates illustrates this improper relation or gradation of the joint haul rates:

70 miles, single line $2.14; joint haul rate $2.37, a difference of 23 cents.

75 miles, single line $2.14; joint haul rate $2.48, a difference of 34 cents.

100 miles, single line $2.59; joint haul rate $2.82, a difference of 23 cents.

110 miles, single line $2.59; joint haul rate $2.93, a difference of 34 cents.

The joint haul differentials, it will be noted, range from 22 cents to 34 cents over the single line rates. We feel that this differential should be graded more uniformly and [fol. 665] decreased with increased distances. Moreover, in our opinion, the single line scale is too high and improperly graded under the present conditions for general application throughout the Southeast.

In this connection we wish to direct attention to the language used by the Commission in the Blackshear Manufacturing Co. vs. A. C. L. Railroad, et al., Docket 9247, 87 I. C. C. 654, page 662, and again on page 663. With these statements of the Commission we are entirely in accord.

The Royster scale applies on complete fertilizer, and on other fertilizers, except certain materials on which the Commission makes a reduction of 10 per cent. It is also applied to mixed goods, but not to fertilizer materials. It does not apply on acid phosphate in bulk, tankage, and I have not a list of the materials, but various materials 10 per cent less than the Royster scale, carload minimum 50,000 pounds. There are certain commodity rates in effect from Norfolk to certain points in North Carolina, but it only applies to points of manufacture, and not to all points in North Carolina. That is to say, there are certain fertilizer factory points in North Carolina to which the rates from Norfolk on materials are less than the Royster scale.

Next is shown the Memphis Southwestern Scale prescribed by the Interstate Commerce Commission in the Memphis Southwestern Investigation, Docket 9702, 77 I. C. C. 473, for application from Memphis, St. Louis, New Orleans, Shreveport, etc., to Arkansas, western Louisiana, and Southern Missouri points, and between points in this territory interstate and intrastate; in Arkansas Fertilizer Company vs. A. & S. Railway, et al., Docket 14,371, 92 I. C. C. 587, for application from Little Rock, Arkansas, to Oklahoma and Texas points. This scale has also been recently established voluntarily by the carriers from Shreveport to Texas points, and has been proposed for application from New Orleans, Memphis, etc., to Texas points.

[fol. 666] This scale was prescribed in the large territory mentioned by the Commission after an exhaustive investigation. It will be noted that this scale is for distances up to 180 miles lower than the Royster scale, and slightly higher for distances in excess of 180 miles.

The Commission have held in several cases that transportation conditions in the Southwest are less favorable than those prevailing in the Southeast, and as a result of this difference in transportation conditions the rates in the Southeast are generally on a lower level. (87 I. C. C. 654; 77 I. C. C. 502; 78 I. C. C. 151; 80 I. C. C. 157).

The joint haul differential is 20 cents for all distances over the single line scale.

Next is shown the single line and joint line scales prescribed by the Interstate Commerce Commission in Blackshear Manufacturing Co. vs. A. C. L. Railroad, et al., Docket 9247, 87 I. C. C. 654, involving rates from Blackshear, Georgia, to Florida points.

Scale No. 1 applies from Blackshear to northern and western Florida points, and Scale No. 2 to southern Florida points as defined on the exhibit. It will be noted that Scale No. 1 applicable to northern and western Florida is for distances up to 180 miles lower than the Royster scale, the same at 420 miles and lower thereafter; and slightly higher for distances 180 miles to 400 miles, and was prescribed for application in a territory where transportation conditions are admittedly less favorable than in the Southeast generally. This scale is for distances up to 240 miles the same as the Memphis Southwestern Scale; over 240 miles it is, in some cases, slightly higher and others slightly lower. The joint haul differential prescribed in this case, it will be noted, is also 20 cents, for all distances, over the single line scale.

[fol. 667] Next is shown the single line scale prescribed by the Interstate Commerce Commission in the Virginia-Carolina Chemical Company cases, Docket Nos. 2617, 2151 and 2618, 18 I. C. C. 1, 3 and 5, for application from Memphis to points in Arkansas on the Iron Mountain, Rock Island, and Frisco, advanced in accord with General Order 28 and Ex Parte 74, and reduced in accord with the reduced rates of 1922, less 2 cents per 100 pounds Memphis bridge toll, which was the toll fixed by the Commission

in Docket 9702. This scale, it will be noted, is lower than the Royster scale for distances in excess of 55 miles, except at 80, 85, 90, 105 and 110 miles it is slightly higher. It is higher than the Memphis-Southwestern Scale up to 125 miles, the same at 130 and 135 miles, and lower thereafter. It is noted, however, that the gradation of this scale differs materially from the others, mileage blocks of 25 miles being used up to 100 miles and 50-mile blocks thereafter. That scale was superseded by the Memphis-Southwestern Scale.

Exhibit 327, this exhibit shows a comparison of the mileage scales proposed by the Traffic Committee of the National Fertilizer Association with those proposed by the carriers, and the present intrastate scales prescribed by the Southern States Commission.

First is shown the National Fertilizer Association Traffic Committee's proposed single line scale applicable over trunk and short lines and joint line applicable over trunk line, short lines, and trunk and short lines, and the carriers' proposed scales, single and joint line, applicable over trunk line. When these statements were prepared we were not advised as to what scales would be suggested by the short lines, single or joint.

Our scale has been explained in connection with the preceding exhibit, with the exception of the short line scale. [fol. 668] The single line short line scale is made 20 per cent. higher than the Trunk Line scale. The joint line short line scale is made the same differential over the single line scale as shown for the trunk lines except that the scale is only extended up to 300 miles.

The trunk and short lines joint line scale is made 10 per cent. higher than the joint scale of the trunk lines.

These scales are the same as those adopted by the Alabama Public Service Commission except the trunk and short lines joint line scale for distances of 20 and 25 miles, where there is a difference of 10 cents. This change was made to correct an apparent error in the Alabama Public Service Commission's scale.

Next is shown the Virginia single line scale of the Southern Railway applicable between stations south of Richmond

and Lynchburg. This scale was selected because it covers a larger territory in what might be termed strictly Southern territory. The scales of the A. C. L. and S. A. L. Railways are higher but these lines operate comparatively little mileage in Virginia. Moreover, rates published from Richmond and Norfolk to A. C. L. and S. A. L. Railway stations in Virginia are on a lower basis than their mileage scales. The scales of the C. & O. and N. & W. Railways are higher than the ones shown, but these lines are located in Trunk Line Territory and their scales reflect the increase of 40 per cent. authorized in Ex Parte 74. (Tes. 950 960.)

There is no uniform scale prescribed by the Corporation Commission of Virginia, scales being prescribed for each line; nor is there a joint scale, joint rates being based on combination of locals. Through joint rates are published, however, that are generally lower than combination.

Next is shown the single and joint line scales prescribed by the North Carolina Corporation Commission for application via the Trunk Lines. These scales are those pre- [fol. 669] scribed by the North Carolina Corporation Commission effective October 13, 1914, with, of course, the increases of General Order 28 and Ex Parte 74, and the reduction of 1922, after an investigation by a special rate commission appointed by the Governor in compliance with an act of the Legislature of 1913.

Joint rates between the trunk lines and the short lines are made on basis of combination, the trunk line factors being subject to a deduction of 25 per cent., and the short line factors being subject to a deduction of 20 per cent. Prior to October 13, 1914, joint trunk line rates were made on basis of combination of the single line mileage scales less 25 per cent.

Next is shown the present South Carolina single-line scale prescribed by the South Carolina Railroad Commission, their Orders Nos. 274 and 279, Circulars Nos. 275 and 277, effective March 15, 1924, applicable via trunk lines, and represented a horizontal reduction of 12 per cent. in the then existing rates.

There is no joint line scale, joint rates being made by a combination of locals less a deduction of 20 per cent. from

each factor. Prior to March 15, 1924, the South Carolina scale was that prescribed by the South Carolina Railroad Commission, and with the exceptions of the increases and reductions of 1918, 1920, and 1922, has been effective since December 6, 1909 (Circular 135, November 1, 1909). The Railroad Commission of South Carolina on January 30, 1925, issued their Order No. 300 and Circular No. 289, providing for a further reduction in rates, effective March 8, 1925, but the carriers have secured an injunction against the order of the Commission and the reduced scale has not, therefore, been made effective.

Next is shown the Georgia single line scale as prescribed by the Georgia Public Service Commission. This scale is based on the Commission's standard Class M. scale less 10 per cent, and with the exception of the advances and [fol. 670] reductions of 1918, 1920 and 1922, has been effective since January 1, 1897, their Circular No. 267.

Joint rates are based on combination of locals without deduction.

The Georgia Public Service Commission have recently prescribed single and joint line scales on classes and a number of commodities. A fertilizer scale was prescribed effective November 15, 1924, their Docket 15416. The short line carriers in Georgia were, however, successful in securing an injunction in the Federal Court against the order of the Georgia Public Service Commission. This scale, therefore, remained effective only from November 15th to November 26, 1924, 3:30 P. M. The scale prescribed represented substantial reductions in the present scale. A different South Carolina scale has been enjoined.

"Q. Well, is the one shown here the one your witnesses are complaining of?

"A. That is now in effect. No, the order that they prescribed and had enjoined here—well, I believe that the carriers also have Section 13 A proceedings against this scale as well."

"Mr. McGehee: The ones in effect. So far as the fertilizer interests and the railroads are concerned, I don't think there is any difference between us at to having a common level, State and interstate—is there, Mr. Bosley?

"The Witness: That is correct."

Next is shown the Florida single line scale, Class M, prescribed by the Florida Railroad Commission for application via the A. C. L., F. E. C., L. & N. and S. A. L. Railways, and applies any quantity. This scale has been effective since July 1, 1903, via the A. C. L. and S. A. L.; November 1, 1910, via the F. E. C.; October 21, 1914, via the L. & N., [fol. 671] with, of course the advances of 1918 and 1920 and reduction of 1922.

Joint rates are made on combination of locals less 10 per cent where two lines are involved, and less 20 per cent where three or more lines are involved.

Next is shown the single and joint line scales prescribed by the Alabama Public Service Commission effective July 25, 1924, their Docket 4136, after an exhaustive investigation and comprehensive report.

Prior to the establishment of these scales the Alabama single line scale was the same as the present Georgia scale, joint rates being made on basis of combination of locals without deduction. There were, however, in numerous cases published joint through rates lower than this basis.

This scale was established by the Alabama Legislature of 1907, and was known as the Statutory Scale, the Georgia Scale being adopted on some 110 commodities. This scale was made effective promptly by the A. C. L., A. G. S., M. & O., N. A., and Southern Railways after negotiations with the Governor and the Railroad Commission. The C. of Ga., L. & N., and Western Railways, however, contested same in the Federal Court and secured an injunction against its operation. On appeal the rates were ordered effective for a trial period and the scale finally became effective via the C. of Ga., July 27, 1914; L. & N., August 13, 1914, and W. of Ala., July 27, 1914.

Next is shown the Mississippi single line scales of the I. C., M. & O., and Y. & M. V. Railroads as representative. There is no uniform scale prescribed by the Mississippi Railroad Commission, each line publishing individual scales subject to the approval of the Commission. Joint rates are made on combination of joint mileage factors which are, [fol. 672] approximately: 50 miles and under, 10 per cent; over 50 and under 150 miles, 15 per cent; 150 miles and over 20 per cent less than the local scales except between stations on affiliated lines where joint mileage rates are in

effect. These scales have been effective for the past several years with, of course, the advances and reductions of 1918, 1920 and 1922.

My next exhibit, 328, is a chart which graphically pictures the four mileage scales indicated, and speaks for itself.

My next exhibit, No. 329, shows an analysis of the carriers' proposed scales compared with a similar analysis of the scale being proposed by the National Fertilizer Association.

The carriers' proposed trunk line scale, single and joint line, for distances 35 to 500 miles is that prescribed by the Commission in the Royster Case, Docket 7573, 50 I. C. C. 34, advanced in accord with General Order 28 and Ex Parte 74, and reduced by 10 per cent in accord with the reduced rates of 1922. For distances less than 35 miles the single line scale is the same as the present North Carolina Scale; the joint line scale being made a differential of 34 cents higher than the single line scale and is higher than the North Carolina joint scale. For distances 600 to 1,000 miles, the carriers' single line scale is made by using the original scale prescribed by the Commission in the Royster Case, extended by the use of the same progression observed by the Commission for distances between 500 and 600 miles; i. e., 10 cents for each 25 mile block. This extended scale was then advanced and reduced in accord with the horizontal increases and reductions above referred to.

[fol. 673] The joint line scale is evidently made by observing the differential prescribed by the Commission; namely, 20 cents over the extended scale (single line), advanced and reduced in accord with General Order 28, Ex Parte 74 and Reduced Rates of 1922. This formula, however, does not result in the same figures proposed by the carriers for distances 850 to 975 miles, there being slight differences in their figures compared with those based on the formula described. It looks very much like there has been an error in calculation made in their figures arriving at their joint line scale for these distances.

The analysis made on the attached statement shows very clearly the inconsistency with which the carriers' single line scale is graded and the differentials in their joint line scale over the single line scale. These inconsistencies are, of

course, largely caused by the use of the scale prior to the general advances and reductions, and particularly the advances of General Order 28, which carried with it a disposition of odd figures in per ton rates.

I desire to call the Commission's attention particularly to the gradation of the carriers' proposed single line scale as shown in this exhibit. You will note that after passing 25 miles the progression is 11 cents for 10 mile blocks, and then drops back to 5 mile blocks; 11 cents increase again for 10 mile blocks, and drops back to 5 mile blocks, and so on up to 100 miles, where the rate for 110 miles is the same as for 96 miles; then advances to 20 mile blocks, 11 cents increase in rate, and drops back again to 10 mile blocks with 12 cents increase. This continues up to 300 miles. At 320 miles the rate increased 23 cents for 20 mile blocks, and for 340 miles and over 320, the rate increase is 11 cents. There is no uniformity of increase in the various blocks in the scale from start to finish.

[fol. 674] The joint line differentials of the carriers' scale, you will note, ranges from 13 cents to 38 cents, the maximum differential 38 cents being shown at 950 miles, or very close to the maximum distance to which the scale is carried. This, of course, is contrary to all rate making principles previously adhered to by carriers, as well as by the Commission, in constructing joint line mileage scales.

My next exhibit, No. 330, is a comparison of intrastate rates applicable between points in Southern States and an average of such rates, with the scale proposed by the carriers. It will be noted that this average is lower with one exception than the scale proposed by the carriers.

My next exhibit, No. 331, shows a comparison of the present rates based on the Commission's decision in I. & S. 1303, 64 I. C. C. 386, with the National Fertilizer Association's Traffic Committee's proposed scale and the carriers' proposed scale on fertilizer from St. Louis, Memphis, and Nashville to Mississippi Valley common points. You will note that except for short distances the National Fertilizer Association scale is higher than the rates established in compliance with the Commission's decision in I. & S. Docket 1303.

The next is a series which I have offered in one lot, 332-359, inclusive. This series of 28 exhibits shows a comparison of the present rates on fertilizers from Charleston,

South Carolina, Atlanta, Georgia, Birmingham, Alabama, Chattanooga, Tennessee, Cordele, Georgia, Knoxville, Tennessee, McCarty, Tennessee, Montgomery, Alabama, Nashville, Tennessee, New Orleans, Louisiana, Pensacola, Florida, Tupelo, Mississippi, and Savannah, Georgia, to interstate points, and from Chattanooga, Knoxville and Nashville, Tennessee, to Tennessee points, with those based on the scale proposed by the National Fertilizer Association's Traffic Committee and the carriers' proposed scale. This exhibit has 28 pages, goes to 359. Each one a separate exhibit, 332 to 359. The last exhibit is from Charleston, [fol. 675] South Carolina, to Southern Railway stations.

It is realized that the traffic test does or should dispense very largely with the necessity of considering details of rate changes which would result by the substitution of different rates than those which now exist. But on the other hand the 28 exhibits which are just introduced and 25 others which follow at least serve to enable a proper impression to be derived concerning the areas which would be affected by one or the other of the different rate levels advocated by the parties to this proceeding.

The next series of exhibits, 360-384, inclusive, runs from Mobile, Alabama, to Gulf, Mobile & Northern Railroad stations. This series of 25 exhibits shows a comparison of the present interstate rates from Atlanta, Georgia, Augusta, Georgia, Blacksburg, South Carolina, Charleston, South Carolina, Charlotte, North Carolina, Jacksonville Florida, Memphis, Tennessee, Meridian, Mississippi, Mobile, Alabama, Montgomery, Alabama, Opelika, Alabama, Rome, Georgia, Savannah, Georgia, Wadesboro, North Carolina, and Wilmington, North Carolina, to interstate destinations with the intrastate scale prescribed by the State Commissions in adjacent States.

Those exhibits show that the prevailing level of interstate rates is materially higher than the intrastate scales.

This data is submitted in compliance with Subject No. 6 shown in the notice of the Interstate Commerce Commission, dated March 9th, regarding this investigation in which they outline thirteen phases of the case on which they desired data. I was just talking about 360 to 384.

Exhibit 385 is filed to correctly show rate information incorrectly shown on the carriers' Exhibit No. 32, witness

Manzies, between points in Arkansas, and between points in South Carolina for distance of 125 miles. The scale shown by the carriers in their Exhibit No. 32 as applying between points in Arkansas is the Class E rates published [fol. 676] in Agent F. A. Leland's Tariff No. 5-D, and is not applicable to fertilizers. Commodity rates have been effective between points in Arkansas for the past several years, the present rates being those prescribed by the Interstate Commerce Commission, Memphis-Southwestern Investigation, Docket No. 9702, 77 I. C. C. 473, and as published in Agent Leland's Tariff 114-A, I. C. C. 1645, and are shown on this exhibit. (Tes. 960-970.)

The carriers' Exhibit No. 32 shows a rate of $3.04 per net ton between points in South Carolina for distances of 125 miles, which is incorrect, the proper rate being $2.93.

This exhibit also shows other changes in the carriers' Exhibit No. 32, which we deem necessary to properly reflect the correct average of the scales shown. As instance, the carriers show on their Exhibit No. 32 under the Virginia scale, the rates of the A. C. L. Railroad, which we do not think are representative of the Virginia rates. The Coast Line operate comparatively little mileage in Virginia, and very little traffic is handled on their rates. Moreover, the published rates from Richmond and Norfolk to points on their line in Virginia are in most cases materially lower than their mileage scale, as shown by my Exhibits Nos. 387 and 388. We have, therefore, substituted on our exhibit the rates of the Southern Railway in Virginia applying between stations on that line south of Richmond and Lynchburg, which we think is more representative of the Virginia situation.

On the carriers' Exhibit No. 32 rates are shown between points in South Carolina up to 250 miles only, and in Alabama only to 150 miles, which is the maximum distance operated by the Coast Line in those States. We have, therefore, extended these scales to 300 miles, observing the scale of the Southern Railway for distances in excess of 250 miles in South Carolina and 150 miles in Alabama.

Between points in Tennessee the carriers have shown the [fol. 677] Class K scale of the Southern Railway on which, so far as we have been able to determine, no fertilizer traffic moves.

The rates published by the Southern Railway from Knoxville and Chattanooga to stations on their line between Chattanooga and Bristol are on a considerably lower level than the Class K scale shown by the carriers, and we have, therefore, substituted on this exhibit the scale used by the Southern Railway in publishing rates from Chattanooga to stations on their line.

Between points in West Virginia the carriers' Exhibit No. 32 shows rates published in Agent Jones' Tariff I. C. C. No. 941, which is the sixth class, so-called Disque scale, applicable between points in C. F. A. Territory. We have substituted on this exhibit the rates applicable between points on the C. & O. Railway in West Virginia, which we think is more representative of the West Virginia situation than the scale shown by the carriers.

The carriers have also shown the rates between points in South Carolina and Alabama effective prior to the recent reductions ordered by the State Commission of those States, and we have also shown such rates on this exhibit. If, however, the present rates applicable between points in those States were shown, it would further materially reduce the average.

This exhibit is, therefore, introduced to correct the errors in the carriers' exhibit, and to make the other changes noted, which we think presents a more accurate portrayal of the average of all of the scales shown.

Exhibit No. 386 is filed to show correct information as to the prevailing rates in Arkansas and Louisiana (West of the Mississippi River) incorrectly shown on carriers' Exhibit No. 32, Witness Manzies).

The scale shown on carriers' Exhibit No. 31 as being applicable between points in Arkansas in the Class E rate published in Agent F. A. Leland's Tariff 5-D, which does [fol. 678] not apply on fertilizers, the commodity scale prescribed by the Interstate Commerce Commission in the Memphis-Southwestern Investigation Docket No. 9702, 77 I. C. C. 473 being applicable between points in Arkansas intrastate and is published in Agent Leland's Tariff 114-A, I. C. C. 1645.

The scale shown on carriers' exhibit No. 31 as applying between points in Louisiana is that formerly applicable and as published in Agent Leland's Tariff 105-D. This scale,

however, is not now applicable between points in Louisiana west of the Mississippi River, the Louisiana Public Service Commission having prescribed in their Order No. 296, effective March 23rd, 1925, the scale shown on our exhibit. This scale is published by the individual lines, and reference is made to the T. & P. Railway Tariff 23-G.

The Class E scale shown on the carriers' Exhibit No. 32 as applying between points in Arkansas is materially higher than the prevailing commodity scale, and thus the average of the 5 scales shown by the carriers is materially higher than the proper average as reflected by this exhibit.

Attention is called to the fact that the correct average reflected by this statement shows that the average scale in the 5 states shown is lower than that proposed by the carriers for application in Southern Territory for distances 15 to 170 miles.

My Exhibits Nos. 387 and 388 show the present rates on fertilizers from Norfolk and Richmond, Virginia, to A. C. L. Railroad and S. A. L. Railway stations in Virginia, as published by the carriers, compared with the Atlantic Coast Line and Seaboard Air Line Virginia mileage scales and the carriers' proposed scale and are filed to show that these carriers did not observe their Virginia mileage scales in arriving at published rates.

My next Exhibit, No. 389, shows rates recently approved by the Virginia Corporation Commission, Case 2496, from [fol. 679] Norfolk and Richmond to Norfolk & Western Railway stations in Virginia on their Durham and Winston-Salem Divisions. Attention is directed to the fact that the approved rates are generally lower than the scale proposed by the fertilizer interests.

My exhibit No. 390 shows a comparison of rates on sulphate of ammonia from Birmingham, Alabama, to some of the Southeastern and Carolina points with the proposed fertilizer scales of the National Fertilizer Association and carriers. There are 38 points shown on this sheet. The carriers' proposed scale will increase the present published rates to 21 points and decrease them to 13 points. To 4 points the rates are the same. The National Fertilizer Association scale will decrease the rates to 27 points and increase them to 11 points. Of course, there are other points that receive sulphate of ammonia where there will be increases and decreases by applying these scales.

My Exhibit No. 391 shows the fertilizer tonnage by states for the years 1909 to 1924, inclusive, and is taken from the Fertilizer Hand Book, which is considered reliable and official.

In connection with that last exhibit that I have just referred to, it contains figures which go back to an earlier period than did the figures of Doctor Davis concerning the proportionate consumption of fertilizer in the different states. In 1914 substantially the fertilizer in Georgia was 1,282,088 tons. The tonnage in North Carolina for the same period was 872,820 tons. In fact, Georgia exceeded North Carolina in every year from 1909 to 1914, inclusive.

We own about 55 plants, but we are not operating all of them at the present. That, partly, is due to the present receivership, and then the output was curtailed to a certain extent. Those 55 plants are pretty widely distributed throughout the Southern States; we have 6 in Virginia, and a certain number in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Tennessee.

[fol. 680] I am the chief traffic executive of that company. It is a part of my duties to assume responsibility for the entire movement of the product, and the inbound materials of my company, as far as rates and transportation. From that vantage point I am quite reasonably familiar with those operation conditions affecting the car supply used in the assembly of raw materials and the distribution of the finished product.

"Q. Eliminating in your answer conditions as they may prevail at one of the other of two ports, please testify whether or not the period of intensive movement of fertilizer occurs at that time of the year when the volume of business being carried by the carriers is such that they can most easily accommodate themselves to the peak fertilizer movement.

"A. I think that is generally true, especially if cotton moves in great volume to the ports in January, February and March. If the cotton moves, if the preponderance of the cotton movement is earlier in the year, of course there is a different situation.

"Q. That is, speaking of the port?"

"A. Yes."

Well, there is always a number of cars going into interior plants with material, that are available for outbound business, but to be perfectly fair, of course there is a great deal of that material that moves in in the summertime, and there is no outbound movement. I think the carriers have made it a practice for years, especially at certain points, principally at the port of Charleston, for instance, or places where a great many factories are located, to park and concentrate a certain number of cars at the start of the season, but after the movement commences, why, of course, that parking is done away with, and the cars are used as they bring them in, or as they are made empty at the point where they are to be used. Even as to that condition, it is certainly true as well at the interior, to a certain extent. [fol. 681] Other than at the ports, I find the practice to be to return to the plants cars which have been loaded with fertilizer on a great many occasions. I would not like to say on that it is a consistent and regular practice to do so. I have seen lots and lots of cars come back that had previously been loaded with fertilizer, but whether they—I don't think the carriers attempt to make a shuttle movement.

That is the second lot, from 392 to 414, inclusive, is that second batch.

The Southern commodity rate structure, with the exception of only a few commodities, is in such condition that it is very difficult in a proceeding such as this to prepare exhibits enabling an accurate determination of the relationships or differences between commodities. In other words, the rate adjustments on different commodities differ so much and are so responsive to older methods of rate-making as that no very great weight can be attached to any attempted showing of rate differences as between different commodities.

However, it was concluded that at least the effort should be made in this proceeding to prepare and submit various exhibits setting forth what seemed to be the typical rate levels on various different commodities in order that at least some impression might be derived as to the differences between them and fertilizer. We have undertaken such study in a series of exhibits numbered 392 to 414. No particular effort was made to select articles rated lower

or higher than fertilizer. Instead, we have simply selected a representative list of articles and have undertaken to exhibit the typical rates thereon between points in the South. From them at least some impression may be gathered as to the comparative rate level on fertilizer, and such other commodities. (Tes. 970-79.)

[fol. 682] Cross-examination:

To explain how this scale that is proposed by the National Fertilizer Association Traffic Committee was arrived at: The guide for it is the Memphis-Southwestern Scale. The two scales were compared and certain percentage reductions were made in the Southwestern Scale and then it was graded a little bit differently, but that was the basis for the scale. In other words, we took the Memphis-Southwestern Scale as the scale which the Commission had prescribed on fertilizer in Southwestern territory, and then we felt that owing to more favorable transportation conditions in the Southeast there ought to be some deductions to fit that scale to conditions in this country. As to giving any thought to the question of revenue—preserving revenue, in that: Well, we knew of course that this scale would make a reduction in revenue in North Carolina, a reduction in revenue in South Carolina under the scale existing at the time that it was prepared—that is, prior to the decisions made by the South Carolina Commission, but there may also be some reduction in Georgia and Alabama. I cannot tell exactly how that would work out under a traffic test, because there are a great many rates in the two States, on interstate business, that are higher than the Georgia Scale, or the old Alabama Scale, but there are also rates in effect on interstate business between various States in the South that are lower than this scale. This scale advances the rates in some instances. Now, the only way you could tell about whether the revenue would be preserved, or how much it would be decreased in the whole territory, would be by a fair traffic test. The movement of fertilizer [fol. 683] varies so—that is, I mean, it varies from different factories. One year a good big tonnage may move from a certain point, and the next year that tonnage may be decreased very much, and move from another point, and of course that would affect the revenue to a great extent.

"Q. Now, my understanding is that a traffic test is to be presented in such a way that it will be possible to procure at least a fair approximation of the effect of your scale by applying it to the basic commodities; is that so, Mr. Menzies?

"Mr. Menzies: No, it won't show that information; it will show the effect of the general application of the Royster Scale as compared with the present rates. It won't show the effect of the Fertilizer Association's scale.

"Mr. Cotterill: It is my recollection that an effort was going to be made to make a sub-division of certain mileage blocks, which, if done, would then enable with comparative ease a test to be made as to the result of some other scale.

"Com. Eastman: Well, that is what I had in mind.

"Mr. Cotterill: Yes."

Assuming that is so and that, after applying my scale with that basic commodity, it should be ascertained that it would result in what might be called a substantial reduction in revenue, as to whether I would still advocate the scale then: Well, I think that would depend entirely upon how the reduction in revenue resulted. As far as I personally am concerned, I feel that the carriers can well stand a reduction in revenue on basic commodities, such as fertilizer, and if it is remuneration for the service given for handling this particular commodity. The level of the scale [fol. 684] is and is not a matter of importance from the standpoint of the fertilizer companies. The fertilizer, of course, to a certain extent, they can pass on the freight to the consumer, but it affects us in this way: Whenever you make a fertilizer scale so high, or because of—putting it another way—you make the cost of fertilizer so high it reduces consumption; there is a certain distance that you can go, and no farther. Now, a man may take, under favorable conditions, 100 tons, and if the conditions, price, etc., are unfavorable, he will only take 50 tons. It affects us in that way. And then, another thing it affects us in, bringing in materials. It is hard to say if the effect of the scale that we are proposing would be to increase the consumption of fertilizer. Of course, there are other conditions that have great bearing on that, but Mr. Bates introduced an

exhibit there that shows the in-and-out cost of fertilizer at the various plants, and also what the price of fertilizer has been for several years. Now, when you take any commodity that bears a fertilizer cost of possibly one-fifth of the total cost to the consumer, it is bound to affect consumption if you increase that cost, either up or down. Now, how much would depend a great deal upon economic conditions. You take a State that is very prosperous and has good crops and everything of that kind, why, they will buy a certain amount of fertilizer, regardless of price, if they feel that they have to have it. On the other hand, if the conditions are not favorable, why, they would very likely cut down the consumption to the minimum. Now, all of those things have a bearing, but as I said before, there is a limit to where you can increase the price of fertilizer; [fol. 685] they will buy a great deal more when it has a reasonable price than they will when it is high. We have taken all of those things into consideration in fixing the level of our scale. This scale is to be applied both to fertilizer and fertilizer materials, whether outside of phosphate rock and sulphuric acid, which are not involved in this case. Sulphur is included in the fertilizer list. We include sulphur and not sulphuric acid. The conditions are entirely different. Sulphuric acid moves in tank cars and moves to the capacity of the tank, and I think that sulphuric acid ought to likewise move under a less rate than sulphur or possibly any other materials with the exception of phosphate rock. Those two have always been treated separately from the other materials in the fertilizer list. My scale would not apply to them.

It has been the custom in the past in some districts to have different rates on fertilizer and materials; in North Carolina they have a fertilizer material list of 10 per cent less than fertilizer, and it was customary for a great many years to have a less rate on certain fertilizer materials into the Mississippi Valley Territory from both the Gulf Ports and from Chicago and other producing points in C. F. A. and Trunk Line Territory. There are different rates in Florida. They have a scale there on certain materials, my recollection is, 75 per cent of the fertilizer rate, and Georgia makes a special rate on acid phosphate and kainit

of 10 per cent less than the fertilizer rate. So far as our Association is concerned, I do not advocate such a difference. This scale, for instance, which we consider reasonable, we would be willing to accept that on fertilizer, com- [fol. 686] mercial fertilizer and fertilizer materials, with the exception of phosphate rock and sulphuric acid. (Tes. 982-987.)

As to whether, in applying this scale, we propose that it be applied as a strict mileage distance basis, or do we propose certain groupings of origin and destination points: Outside of the import materials which we think the various ports should be equalized, and outside of districts—for instance, like Atlanta, where there are fertilizer factories located, some at East Point, and some maybe—well, I believe there is a station called Armour, is located, now of course we think that in cases of those kinds, the mileage should apply from the whole group. You might take other instances, like Charleston, where the fertilizer factories are as far as 8 miles from Charleston proper—that is, that is the maximum of the run on down the River, you know, two or three miles, where of course we think that that mileage, the Charleston mileage or the Atlanta mileage, should apply from all of the points.

Now, there is one other thing that of course is a matter for the Commission to determine, but take sulphate of ammonia, there are certain materials that I hardly think that a strict rigid mileage scale should apply on, for instance, sulphate of ammonia is only produced in the Birmingham district in the Southern Territory. Now, that district to points located on the Birmingham Southern runs up to Chattanooga, Gadsden, and various other points along there. The only other place of production is either north of the Ohio River or north of the Potomac river, Pennsylvania, and all through the West, where steel mills are located, like Gary, and Anniston, Knoxville, and things of that [fol. 687] kind. That is the steel centers. If a rigid mileage scale should apply on material of that kind, I don't think it would work out satisfactorily. I think there should be some other way of making those rates. As to being prepared to suggest that "other way": I think possibly the very best plan, for something would have to be tried out, would be possibly proportional rates either to Virginia

Cities and Ohio River gateways, and proportional rates south. The Birmingham rates could of course—strict mileage of course could be applied up to a certain distance, but the rates also ought to be adjusted so as to allow shipments from the Birmingham District to compete with shipments from the Pennsylvania District. For instance, like Pittsburg, Freeport, New Jersey, Bethlehem, Pennsylvania, and points of production of that kind. I do not know whether it would work our or not to make proportional rates from those districts on a mileage basis. It might, and it might not. I never tried it.

If we are going to make the rates on a distance basis from the Northern producing points, and then adjust the rates from the Birmingham District so that they can meet that competition, it would then be fair to adjust the rates to the Northern producing points so that they can meet the Birmingham competiton, where Birmingham has the advantage; I think yet that would be perfectly fair.

"Q. Well, do you think that this Commission will do that?

"Mr. McGehee: Not in this case; that issue is not before you.

"The Witness: The case as drawn is only from the Ohio River and Virginia Gateways.

[fol. 688] "By Com. Eastman:

"Q. Would not that be a matter of fixing a maximum, so far as this Commission was concerned, and then if the carriers wanted to make adjustments to meet competition they could.

"A. I think that would be a happy solution. I think the carriers would be very glad to put all of these producing points on a parity. Some of them are located on one line, some on another, some are accessible to all lines; they naturally would like to have plants of that kind also fixed on a rate basis that would allow them all to get into the territory that they naturally should."

Sulphate of ammonia is about the only material. There is one other material, say cyanimid is only produced in one point, like Niagara Falls, it might also deserve special treatment in some way.

Now, the import rates, our idea is that the ports should be equalized as far as possible. Of course there has to be a limit to that, you could not expect—heretofore, I believe that Charleston, Savannah and Jacksonville, the rates have been the same to Albany, Georgia.

We are proposing the same rates intrastate as interstate. I don't see how we can except any State from that, to be consistent.

I think rates should be the same in all states, especially if the interstate rate is the same. We are not suggesting that there should be any different level of rates in different parts of Southern Territory.

The scale that I have proposed to the Commission is practically a scale that was made by the Alabama Commission; I explained yesterday, the differences. As to whether my [fol. 689] whole exhibit shows that that scale is materially lower than the average of the intrastate scales in Southern Territory: I think it is a little bit lower, as a general proposition, but there are places—there are blocks, mileage blocks where it is higher. It is not also a fact that that scale prescribed by the Alabama Commission is the lowest on fertilizer ever prescribed, either by the Interstate Commerce Commission or by any State Commission, and made effective in Southern Territory. Mississippi is a lower one. This scale is lower, of course, as a whole, than the old Georgia scale, but the Georgia scale is lower for short distances. (Tes. 987-92.)

The Tennessee Copper & Chemical Company is not a member of your Association. The Southern Fertilizer Company is a member of our Association. They are represented by Mr. Porter.

"Q. Mr. Bosley, if you go into some other territory to get a standard for measuring your rates, why is it that you go over into the Southwest where there is very little fertilizer used, instead of going to C. F. E. Territory, where the consumption in the State of Ohio alone is more than in Texas, and those other States?

"A. Simply because there has never been a scale prescribed in C. F. A. Territory. This scale that we selected was prescribed by the Commission, and if it was fair to prescribe a scale of that kind for the handling of tonnage less than you say is taken in Ohio, we think certainly it should be fair in a territory in the South.

"Q. Well, is it not true that at least some of the fertilizer interests and the Ohio Farm Federation and others have asked for a scale in C. F. A. Territory, and all they have asked for is a scale that is materially higher than the one [fol. 690] you are proposing here to the Commission for application here in this Territory?

"A. Now, you say it is materially higher; that is the question, whether it is or not. We have asked, or intended to ask for a scale 75 per cent. of the 6th class rates. There are a good many variations of the 6th class rates in C. F. A. Territory at the present. And I do not know whether our scale is to be based on the so-called Disque Scale or not. I know that part of our case has been turned over to another Committee, I have not gone into it, and I am not familiar with it."

I have been connected with the Virginia-Carolina Chemical Company 25 to 26 years. I guess we have had a plant at Baltimore, Maryland, for over 20 years, I don't remember when we took over the Baltimore plant. Baltimore, Maryland, is the largest single producing point of acid phosphate in this country.

"Q. Is it not a fact that the rates that you paid out of Baltimore from your factory on the Baltimore & Ohio Railroad, and on the Pennsylvania Railroad, are materially higher than the Royster Scale, and that in all these 20 years you have never filed complaint against those rates in that territory?

"A. Now, you are going wrong on that entirely, there is going to be a witness.

"Q. Never filed a complaint—answer the question.

"A. No, sir, never have filed a complaint, but we are going to file a complaint."

I want to explain that part of it now. Prior to the War there wasn't anything wrong with the rates. I did not

seek or desire to leave the impression that the sole consideration leading up to the recommendation of our scale was the Western rates; there were other elements involved in it; that was merely taken as a guide, a sort of a basis to work on, we prepared numerous scales.

[fol. 691] As to whether, in consideration of the rates as they now exist in the South on fertilizer and materials, it is the judgment of the Committee that the scale, rate level, if uniformly applied, advocated by the Committee, would in some appreciable measure reduce the apparent existing fertilizer revenue obtained by the carriers: I think it would, but it is hard to tell to what extent. It is expected there would be some appreciable measure of reduction, in justification for which, some of the evidence has already been submitted, has been directed, and some of that which is to come will also be directed.

We submitted one scale to the Georgia Commission in 1921 that I think is even lower than this scale. I know it is lower for possibly 100 miles. The one we originally submitted to the South Carolina Commission is higher than this scale. (Tes. 992-7.)

So far as the order of the Commission goes, I think the territory in this scale is limited to the Ohio River.

"By Mr. McGehee:

"Q. One other question, Mr. Bosley. You spoke about a man buying 100 tons of fertilizer. Mr. Bosley, do you think that if the price of 100 tons of fertilizer was $30.10 per ton, that he would be influenced by buying less than that, if the price instead of being $30.10 a ton was $30.45?

"A. I don't think, Mr. McGehee, that that is a fair way to put it. As I stated, Mr. Bates in testimony showed what the average cost inbound and outbound, fertilizer rates were, which amounts to over $5.00 per ton. Now, when you advance rates on outbound stuff, you also advance rates on inbound stuff."

We do not advance it on sulphuric acid in this; you advance on sulphur. You advance on everything else that goes in, but phosphate rock.

[fol. 692] The size of his crops, and the price the preceding year, has a great deal to do with the amount of fertilizer

used by the farmer in a given year, but also the price of fertilizer has a whole lot to do with it. You can make the price of fertilizer so high that he won't buy any. My exhibits don't show that the greatest consumption of fertilizer—submitted by Dr. Davis—has been in the years when the price of fertilizer was the highest, without exception. You will see from my exhibit on tonnage, you will find that there was a greater consumption in the years prior to the War.

I presume, outside of the ports, we are operating in the interior 15 or 20 plants.

In Georgia we are operating Augusta, Rome, Atlanta and Albany. I think that is all in the interior; we have closed down for the present, we may open them up this fall, depends entirely upon conditions. We have closed down Macon, Athens, Newman, Columbus and Americus. In interior North Carolina, we operate at Greensboro, Greenville, Charlotte, Winston-Salem, Wadesboro, Raleigh, Selma, Newbern and Washington.

"By Mr. Dalton:

"Q. Mr. Bosley, you made the statement in response to a question of Commissioner Eastman's, that the custom in North Carolina is to make the rates on fertilizer materials 10 per cent less than fertilizer. You did not intend to leave the impression in this record that is a custom initiated by the carriers, did you.

"A. I did not say that. I said that was what was in vogue on intrastate business." (Tes. 997-1000.)

I don't think that the custom of making rates on fertilizer material in North Carolina 10 per cent. less than fertilizer rates was initiated voluntarily by the Carolina lines; I think it was an order of the North Carolina Commission. I [fol. 693] presume that order was protested by the North Carolina carriers.

"Q. Now, Mr. Bosley, you have introduced a number of comparisons here with the rates on fertilizer in various localities of the South and other sections of the country. In all of those comparisons do you know of a single instance outside of the Royster Scale, any case where the rates have

received both the approval of the Interstate Commerce Commission and the State Commission?

"A. No, that is a rather hard question to answer. I don't know that there is."

I do know that the Royster scale was initiated by the North Carolina State authorities, and received the approval of the Interstate Commerce Commission in the Third Royster Case; I think I went into that rather fully and gave the history of the Royster scale, and why—what the Commission said itself, why they approved it. When I made some reference to a possibility that was contemplated of 75 per cent. of the 6th class rates, I had in mind adjustments in the Central Freight Association Territory.

As to whether I think if we had a fertilizer plant at an interior point in the State of Florida, that we could compete with the plants at the ports of Tampa and Jacksonville, unless we had a material rate that was somewhat lower than the rate on completed fertilizer: That would depend a great deal on the scale of rates they might have on the completed fertilizer. I think it would be very necessary for most any factory now operating at Jacksonville to have a plant in Central Florida, or near Tampa, under [fol. 694] our scale. The present Florida scale, as you well know, is extremely high for short distances, but a very liberal scale for long distances, and I do not know whether I am correct in stating this or not, but the presumption is that it was made in order to give Jacksonville an opportunity to cover the State. There were not any fertilizer factories located in Central Florida in years gone by, and only one or two now. I do not think they produce much, Jacksonville being the only point that produced fertilizer outside of the interstate points, and the scale was made to fit the situation. Under our present scale it is very questionable that we could do business with an interior point in Florida without a material rate against ports of Jacksonville and Tampa; I don't think we could. (Tes. 1000-1002.)

Mr. MENZIES, recalled, stated:

It is the purpose of the carriers to continue sulphur in the fertilizer list, and continuing the fertilizer scale as proposed by the carriers.

"Mr. Martin: From South Atlantic Ports and Gulf Ports, including New Orleans. The present through all-rail rates, from Texas and Louisiana mines into the Southeast, they are published as through rates, the general basis of which is the New Orleans combination. If the carriers' scale be adopted, that will bring some increases in the rates from New Orleans. What will be the purpose of the carriers with respect to their joint all-rail rates from Texas and Louisiana into the Southeast?

"Mr. Menzies: We have not determined that question, but I assume the rates will be continued on the combination."

Generally that means that the present rates are increased to whatever extent the Southern rates are increased. (Tes. 1003-1004.)

[fol. 695] A. J. WHITMAN was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

I am A. J. Whitman, traffic manager of American Chemical Agricultural Company, 2 Rector Street, New York. I have been traffic manager about four years. I have been connected with the traffic department of the American Agricultural Chemical Company about 14 years. That Company engages in the manufacture and distribution of fertilizer throughout the entire South. I cannot say exactly how many plants there are in the South. We estimate about 35 altogether. We have got a good many of them in the South. I do not know as I can guess. My company also operates rather extensively in the Official Classification Territory; I think we have more plants than any other company in the official. In the course of my operations as the chief traffic executive of that Company, I am working in the rate structures in all parts of the country on these articles.

Approximately, the total annual transportation cost affecting the operations of our company which are paid under my control and supervision is about $7,000,000 annually.

The approximate annual loss and damage claim bill of our company, I should say, the maximum would be $3,000. It may fairly be considered, then, that that ratio of a maximum of $3,000 in claims as against a total transportation bill of about $7,000,000 is fairly typical of the claim expense in the fertilizer industry, so far as concerns damage to the article itself.

[fol. 696] There has been assigned to me for special treatment today, the matter of the more or less frequent and persistent reference by the Southern carriers to the comparative rate levels on fertilizer in the Northern and Southern Districts. What I now have to say will be directed exclusively to that subject. I have prepared a statement and I will read it.

(Certain statements were thereupon received in evidence and marked "Protestants' Exhibits Nos. 415 to 435, inclusive, Witness Whitman.")

At the various hearings before the State Commissions in the South and in this present general investigation concerning fertilizer rates, the carriers generally put in evidence statements showing comparisons between the rates in the North and those in the South. While the purport of these exhibits would indicate that the rates in the North are always considerably higher than those in the South, I will show by exhibits following that there are a great many fertilizer rates in the North actually moving a large volume of tonnage that are lower than the rates in the South; also that the rates on many fertilizer materials in the North are lower than the rates in the South for similar distance. Where the Northern fertilizer rates are higher than the Southern it is important also to understand the reasons thereof. (Tes. 1004-1007.)

It is common knowledge that the rate structure in Eastern Trunk Line Territory is in a very chaotic state and full of inconsistencies and inequalities. There are at the present more than 200 different scales of class rates and as many as 12 different scales on one railroad alone. The

rates on fertilizer in this territory are on a mixed basis, that is, somewhat more than 50 per cent of the business moves on the commodity rates, whereas, considerable ton-[fol. 697] nage moves on class rate basis. There is no uniformity in these scales either in progression or relationship, and it is possible to select almost any kind of a rate in the present class rate scale or commodity rate scales for a given distance that is desired. This situation is a result of the gradual growth of the rate structure to fit the conditions. Originally in this territory railroads were composed of small units, and as they were consolidated into larger systems, the rates that were then in force were accepted or such rates influenced the rates that the larger consolidated systems adopted.

It is my information that originally rates were made to some extent on mileage, but this basis was absolutely destroyed by carrier, market, canal and water competition and today there is not much trade of the original basis.

There are also a great many rates made on the group plan between such group points as New York, Baltimore, Philadelphia, Scranton, Rochester and Johnstown, etc. The rates are also influenced to a large extent by the so-called percentage scale applying between Eastern Trunk Line and Central Freight Association Territory.

Previous to the horizontal increase in eastern rates on February 23, 1915, the rates on fertilizer in the North were generally lower than the rates in the South.

The rates in the Northern territory have been increased 5, 15, 25 and 40 per cent and have been reduced 10 per cent in their pyramided form represent an increase of 90 per cent and even more to such points that have been affected by the minimum 6th class rate of 7 cents per 100 pounds, as was prescribed in Geeneral Order No. 28 of the Director General of Railroads on June 25th, 1918.

[fol. 698] On the other hand, the rates in the Southern Territory since February, 1915, have been subject to two 25 per cent increases and a 10 per cent reduction which results in the Southern rates being but 40 per cent higher at the present time than they were previous to February, 1915.

In view of these conditions there was no complaint in Eastern territory about the rates on fertilizer until the depression in 1921, when the condition of the fertilizer manufacturer and the farmer became so serious it was felt that a substantial reduction in freight rates should be made. As a result of this, the Traffic Committee of the National Fertilizer Association petitioned the Eastern Trunk Line Association on November 9, 1921, and the New England Freight Association on November 22nd, 1921; to make a reduction in the rates on fertilizer. These applications for reduced rates were denied. At the hearing before the Interstate Commerce Commission in the Reduced Rate Case of 1922, the traffic committee of the National Fertilizer Association asked for a reduction in the rates on fertilizer of from 20 to 25 per cent, but the Commission only authorized a 10 per cent reduction.

Therefore, the fertilizer manufacturers have not been satisfied with the rates on fertilizer in Eastern Trunk Line Territory, Central Freight Association Territory and New England Territory, and are not satisfied with them at the present time.

A complaint has already been filed by the National Fertilizer Association in C. F. A. Territory under Docket 16494, and it is expected that hearings will be set at an early date.

Complaint has also been drawn up and will be filed at once covering the rates in Eastern Trunk Line and New England territories. (Tes. 1007-1010.)

[fol. 699] It is a fact, shipping out of Baltimore on the class rates, that we strike practically a mileage scale on a pretty high basis for a comparatively short distance and at the end of that distance we strike a blanket rate, which will be blanketed over a very large group; New York, Pennsylvania, it probably extends, the group does, from 150 to 450 miles. I think the exhibit will show that situation pretty well. Around Rochester, New York, is an important farming section of New York State. I am not sure that my exhibit will show rates from Baltimore to that part of the country.

I have got 21 exhibits here, and I think we have shown a rather complete set of rates on acid phosphate here, and

I think that covers that section if fertilizer does not, but I think the fertilizer does go into New York and Pennsylvania, into that section.

Exhibit No. 415 is a statement showing rates on fertilizer materials such as muriate, sulphate of potash, nitrate of soda and sulphur from Carteret, New Jersey, Baltimore, Maryland Philadelphia, Pennsylvania, points in the States of New York and Pennsylvania, compared with the present Royster scale. It will be seen that the rates on these fertilizer materials as a whole are lower than the Royster scale for similar distances. As a matter of information I have included the rates of fertilizers.

Exhibit No. 416 is a statement showing the third Royster scale, 50 I. C. C. 34, which was in effect prior to the horizontal increases and the present scale. The purpose of that is a key scale for comparison with the other exhibits.

Exhibit No. 417 is a comparison of the fertilizer rates from Baltimore to stations on the Baltimore & Ohio and Pennsylvania Railroads in the States of Maryland, West [fol. 700] Virginia and Pennsylvania, compared with the Royster scale, 50 I. C. C. 34, which was in effect previous to the horizontal increases. This exhibit shows that at that period the rates in the North and South were fairly comparable.

The rates shown to stations on the Baltimore & Ohio and Pennsylvania Railroads, and also the Royster scale, are the rates as they stood in 1915, around that time. The Royster scale was not prescribed until 1918, I think, but this scale shows the rates that were in effect previous to the horizontal increase, that is what I want to show, and that is what the object of it is.

Exhibit No. 418 is a statement covering the carriers' Exhibit No. 82, Witness Gardner, reworked to show the rates in effect previous to the horizontal increase February 22nd, 1915. By comparing these rates with the Royster scale it will be seen that the rates in effect during 1915 in the North were even lower than those in the South.

Exhibit 419 is a statement of fertilizer rates from Baltimore, points in Maryland and Pennsylvania showing the present rates, those in effect February 22nd, 1915, compared with the Royster scale under heading North Caro-

lina. It will be seen from this exhibit that the rates in the North in 1915 were lower than those in the South.

Exhibit No. 420, Carriers' Exhibit No. 88, Witness Gardner, reworked to show the rates in effect in 1915 previous to the horizontal increases. This exhibit also shows that the rates in the North at that time were lower than Southern rates.

Exhibit No. 421, carriers' Exhibit No. 81, Witness Gardner, reworked showing the rates in effect in 1915.

[fol. 701] Exhibit No. 422 is a statement showing the rates of acid phosphate, carloads, in bulk from Baltimore to various points in the Trunk Line Territory, compared with the present Royster Scale.

There is a very large movement of acid phosphate that is used for wheat in the Northern Territory. I don't know if it is predominant.

Having regard to Baltimore, from which there is a large movement of so-called fertilizer, that chiefly consists of acid phosphate and the mixed goods. Of course acid phosphate is made on a very large scale at Baltimore, and just whether the movement to the farm is predominant, really, I could not say, I don't want to say. I will say this, that I know that there is a very large manufacturer of acid phosphate at Baltimore. Now, just whether that is sent to the fertilizer factories for further mixing, or whether the larger part is sent direct to the farmer, I could not say.

This exhibit shows, on this acid phosphate, that to all these points from Baltimore, there is only one rate; a blanket rate. That carries distances, as shown by this exhibit, 146 miles up to 433 miles.

I was going to say that as the phosphate is both a fertilizer and a fertilizer material, and this exhibit shows that, and there is a very substantial movement of this commodity from Baltimore. It will be seen from this exhibit that these rates are very much lower than the Royster scale for similar distance. In some cases as much as $2.20 a ton. That is at the present time. That is a commodity rate on acid phosphate from Baltimore. (Tes. 1010-1015.)

[fol. 702] Exhibit No. 423 is a statement of fertilizer rates from Philadelphia to trunk line points showing the present and 1915 rates compared with the Royster scale shown under heading of North Carolina. The purpose of this

exhibit is to show that the rates in effect in the North in 1915 were lower than those in the South.

Exhibit No. 424 is carriers' Exhibit No. 83, Witness Gardner, reworked to show the rates in effect during 1915.

Exhibit No. 425 shows the rates on fertilizer from Carteret to trunk line points at the present and 1915 rate compared with the Royster Scale shown under the heading of North Carolina.

Now, it will be seen in that statement that they have rates to points in the Central Railway of New Jersey, from Carteret that are lower than the Southern rates, or Royster scale, and when it comes to compare them with the 1915 rates, they were lower.

Exhibit No. 426 shows the rates on acid phosphate in bulk from Carteret to various points in Trunk Line Territory. This statement also shows that the rates are very much lower than the Royster scale and in some instances as much as $2.00 a ton.

Exhibit No. 427, covering the rates on fertilizers from Carteret to points in the Trunk Line Territory compared with the present Royster scale. It will be seen from this exhibit that many of the present rates in the North are lower than the present Royster scale. As a matter of information I have also shown the 6th class rate. This 6th class rate is the rate that carries fertilizer up there, and I thought this would give you a good idea of the comparison in some instances. Of course, that is not the general rule, but in a great many instances where the rates are lower than 6th class.

[fol. 703] Exhibit No. 428 is a statement showing the rates on fertilizer, Harrison, New Jersey, D., L. & W. Railroad stations, together with the rates in effect in 1915 previous to horizontal increase, compared with the Royster scale and shown under the heading North Carolina.

Exhibit No. 429 is carriers' Exhibit No. 84, Witness Gardner, reworked to show the rates in effect in 1915.

Exhibit No. 430 is carriers' Exhibit No. 85 reworked to show the rates in effect in 1915.

Exhibit No. 431 is carriers' Exhibit No. 86, Witness Gardner, reworked to show the rates in effect in 1915.

Exhibit No. 432 shows the rates on fertilizer from Hagerstown, Maryland, to Western Maryland and Reading Company railroad stations. Compared with those in effect

in 1915 and the Royster scale under heading North Carolina.

Exhibit No. 433 is the carriers' Exhibit No. 87, Witness Gardner, reworked to show the 1915 rates.

Exhibit No. 434 shows the rates on fertilizers from Syracuse, New York, to stations on the New York Central compared with those in effect in 1915 and the Royster scale under heading North Carolina.

It will be seen that the rate to Fairmont is $1.80, whereas the rate in effect previous to the horizontal increase was 60 cents. The increase in the present rate over the previous rate in this case amounts to 200 per cent. This was brought about by the minimum rate of 7 cents made by the General Order 28 of the Director General of Railroads on June 25th, 1918. This minimum rate of 7 cents resulted in all of the short haul rates on fertilizers that moved on a class basis being increased substantially more than the general horizontal increases and this heavy increase on short haul rates will be noticed in several of the exhibits. [fol. 704] Exhibit No. 435 covers the rates on fertilizers from Buffalo to various trunk line stations shown and shows the present rates and those in effect in 1915 compared with the Royster scale under the heading North Carolina. That completes my statement.

If this proceeding had been instituted and were in the course of consideration in the spring of 1915, it would be the case that the rate level on fertilizer throughout the Southern Territory was either in line with or somewhat higher than the rate level then prevailing in Official Territory. Now, while the rate level on fertilizer west of the Mississippi River, to which reference has frequently been made in this proceeding, was not prescribed by this Commission as early as 1915, if the current rate level west of the River were reduced back by the subtraction of percentages to the 1915 basis, as to whether it then appears that as of that time, the Southern Fertilizer rate level would have been in line with or higher than any other part of the country; I should say they would have been as high as any in the country, if not higher. The present comparative rate levels would indicate in the various ways which these exhibits of the carriers' and I have done, are to be

accounted for almost exclusively by the operation of the various percentage advances which have occurred since 1915.

"Q. And, as I understood you, despite that it is not by any means a proper conclusion to say that these existing Southern rate level is lower than the entire body of the Northern fertilizer rates?

"A. Oh, I don't think they are lower than all of the Northern rates." (Tes. 1015-1019.)

Concerning why I didn't show the rates from Central Freight Association Territory:

[fol. 705] That was assigned to another member of the committee, that did not prepare anything on it. It was not assigned to me. I was assigned Trunk Lines, and worked up the Trunk Lines. I think I could have shown to equal satisfaction in the C. F. A., had I been assigned the subject. The general basis for rates on fertilizer in C. F. A. Territory has been 6th class for a number of years, but I think years ago we did have commodity rates there that were very low, and the carriers pulled them out, the fertilizer people, I don't think they had traffic managers at that time, and they were not in a position to protect themselves. I believe the State of Ohio, for example, consumes 375,000 tons of fertilizer. We supply that fertilizer principally from Cincinnati and Cleveland, there are a good many other plants in Ohio, however. There is a very large movement today from Lochland, Ohio, into that territory; that is Cincinnati. I don't know the basis on which fertilizer is sold out in that territory, at least, I have an idea, but I don't know from my own knowledge. We have a plant at Cincinnati and St. Bernard that is our plant located there. I would not be surprised if the Ohio Farm Bureau Federation that brought this complaint that you referred to this morning, obtain about 75 per cent of their entire fertilizers from Lochland, Ohio; I don't know, but I would not be surprised; they don't buy from us. I did not take any part in that case. I know in that case that they asked for 80 per cent of the 6th, the Ohio Farm Federation; we did not.

"Q. Mr. Whitman, you gentlemen have been postponing filing that complaint, that you were going to file right away, against those rates. Did not you testify down in South Carolina, December, 1923, that you were going to attack those rates right away?"

[fol. 706] "A. I will tell you, Mr. McGlehee, why we have been postponing that. We thought that for a long time it would be better for us to wait until the Eastern Class Rate situation was straightened out, and then we would have a basis on which we could work for commodity rates. We thought that was the right way, but we have concluded now that we have waited so long that we would file our complaint."

"Q. You are going to ask for 75 per cent of the 6th class?"

"A. We have not decided what we are going to ask."

[fol. 707] We said we would ask 75 per cent. in C. F. A. and not in the Trunk Line.

Q. Well, now, assuming that the Commission has fixed reasonable class rates in C. F. A. Territory, and assuming that the Commission has fixed reasonable class rates in Southern Territory 80 per cent. of the 6th class in C. F. A. Territory 80 per cent. of 6th class in Southern Territory would be ridiculous in Southern Territory—ridiculous, because this Southern country is absolutely an agricultural country. Your Northern country is not purely an agricultural country. Probably the biggest part of the people are engaged in manufacturing in the North, and in the South you can see that from your consumption of fertilizer.

All of this question of density of traffic has a lot to do with it. You have got density of fertilizer traffic down here. I should say that that density had a good deal to do with it.

"By Com. Eastman:

"Q. While you are on that point, let me ask you whether you think that 6th class in Southern Territory can fairly be compared with 6th class in Official Territory?

"A. I recall the old figure. I know that the 6th class in Northern Territory is very much lower."

It is very much lower than the per cent. of first class and the class rates in the North, of course, move the majority of the business, I should say. It is a more important rate in the North than it is in the South. In other words, there is a much less spread in the North in the class rates and commodity rates than there is in the South. In other words, comparing the Northern Class rates with the Southern class rates, the Northern Class rates are very much lower, whereas, if you compare commodity rates in the two [fol. 708] sections, you will find that they are often quite close together, and in some cases the Southern rates are lower than the Northern rates.

That is true on brick, we have got lower rates on brick in the South than you have got in that territory. Possibly some of the Commissioners did not agree with that way of making rates, too, but I think tonnage is quite a vital factor in making rates.

Concerning why it is on all my exhibits except one, I go back to 1915 and show what the situation was in 1915, and why I didn't take your Exhibit No. 422 back to 1915: I intended to do it with them all. Well I don't think that was necessary, seeing that I had made so many other comparisons; my idea here was to show some rates that were lower in the North than in the South at the present time. I have given you a variety of rate exhibits there, showing different situations, and I did not think it was necessary to do it in each and every one. I hope I gave you enough exhibits to cover it. 427 is the same way. I figured this; we had enough of one class of exhibits, so I thought I would find some rates in there. I wanted to show you some rates in the North that were lower than in the South, that was the object; I did not think it was necessary to go back and show it. I would be very glad to do it, because I think it would show very favorably to us. I do not mean to tell the Commission that the rates on which fertilizer is moving today, that the rates on which the actual movement takes place in C. F. A. and in Trunk Line Territories as a whole, that the rates up there on fertilizer are not higher than they are in Southern Territory; I don't believe I stated that. (Tes. 1019-1025).

"By Mr. Gwathmey:

"Q. Mr. Whitman, the three exhibits that I find you have filed dealing with the present rates seem to be 415, 422 and [fol. 709] 426. Now, looking at Exhibit No. 415, what was the basis of the selection of the destination points shown on the exhibit?

"A. Well, here is the way it worked out. I will tell you frankly, so that you will know. I asked my office to get up the information where we had rates in the North—that is, get up some that were lower than Southern rates. I knew that we had plenty of them, I could find a lot more if I wanted to."

I asked my office to look up those, certain territories, for me, and make exhibits of that. Here is what I did. I instructed my office to work out this certain territory where the rates were lower than the South.

"Q. Are these exhibits prepared with any particular reference to the actual movement of the traffic?

"A. Well, they move traffic, yes.

"Q. Do you know that?

"A. Oh, yes, absolutely, we move traffic on them."

As to why is it that on this Exhibit No. 415 nearly all the destination points that I show appear to be points at a considerable distance from Carteret, Baltimore and Philadelphia: they happen to be the territory worked up. We did not take the entire territory, but we have other exhibits here that we have covered points nearby, that is, No. 427.

"Q. Now, it has been testified here that the average movement of fertilizer in the South was probably about 100 miles, is it not, and yet on this exhibit, if you look at the rates from Carteret, is it not a fact that in practically every instance in which you find that the Royster scale shows a higher rate than the rates in Northern Territory on this same exhibit, this occurs in the case of longer distances, such as the very first one shown on the exhibit, from Carteret, Baltimore, of 398 miles?

"A. Well, we have plants up there, Mr. Gwathmey, and we actually move business on these rates from these plants, [fol. 710] notwithstanding the fact that we have several in that territory."

It is a fact that in the Northern Territory there are not so many fertilizer plants. There are—they are not so close together. We ship from Carteret, to New York, Pennsylvania, and we ship from Buffalo, and we have had to divide business with a great many of those Baltimore plants that ship into the Middle West from Baltimore.

I don't know that the movement from Baltimore to the Middle West is almost entirely disappeared. I don't believe it, no.

"Q. Well, read the testimony in Docket 15912.

"A. Well, that is all right; I don't believe we believe it."

As to it being a fact, looking at these exhibits, that the cases in which we find that the rates under the Royster scale are higher than our Northern rates are in the cases of long hauls, as to which, even assuming that there may be some movement under our Northern scale, we know there is no movement under the Royster scale: I think I can answer that by going to Exhibit 427. There are rates from Carteret to points on the Central Railroad of New Jersey, running from 8 to 166 miles, and those rates are all lower than your Royster scale for similar distances. (Tes. 1025-28.)

"Q. Taking Exhibit No. 415, where do you show any rates and the Royster scale on that exhibit, as to which there is any likelihood of a substantial movement under that scale in the South?

"A. Well, I will say this: that our company has moved each and every year thousands and thousands of tons of those materials.

"Q. From Carteret and Baltimore into that territory?

A. Many thousands."

Looking at Exhibit No. 422, where I undertake to show rates from Baltimore to Trunk Line Territory as compared with the Royster Scale and whether I find that I have used in that exhibit in almost every case distances as to which [fol. 711] there is no substantial movement under the Royster scale in North Carolina: Yes. In North Carolina, I suppose.

"Q. Or anywhere else in the South?

"A. I don't know about that."

I suppose there must be small factories that ship long distances. I think that fertilizer moves on the average a little more than 100 miles in the South, possibly.

"Q. If that is true, if you look at the shorter hauls in these exhibits, ordinarily you will find that your Royster scale is lower than your Northern scale, then you would except these groups possibly that you mention here on Exhibit 427?

"A. Well, there were quite a few points on that exhibit; that is only one. There are three or four roads there that have got lower rates."

On your Exhibit No. 426, every one of the rates shown there are rates of long hauls. It is a fact that there is a very considerable movement of fertilizer from Baltimore, for example, for relatively short distances into the trucking section in the Eastern shore of Maryland and Virginia; I have no doubt there is quite a big movement. It is largely completed fertilizer, too.

We do not shown those rates on the exhibit; we did not undertake to show all of the rates up there. I could work up a good many. I could work up the whole think if I had time and labor enough, I think—I thought I would give you a fairly complete picture myself.

"Q. So far as these exhibits are concerned, you have had them prepared, not for the purpose of showing the destination territory to which there may be the heaviest movement, but rather for the purpose of finding points as to which you could find that the rates were lower than the Royster scale?

"A. I don't know; I think we have given you a fairly representative—while my object was to select some rates that were lower than the Royster scale, I had the idea of [fol. 712] disproving the statements you have been making right along, that your rates were a great deal lower down here. I set out with that purpose." (Tes. 1028-1030.)

Redirect examination:

In the Northern Territory, I would say that the hauls of fertilizer are much greater than in the Southern Territory taken as a whole. Under all of the rates which I have shown

in my exhibits as applicable to Northern movements, there is a large volume of business moving under the rates.

I would say there is a large volume moves under all of those rates in those exhibits. In the preparation of my exhibits and the making of studies, I had before me an apparent claim on the part of the carriers that substantially the entire body of the Northern fertilizer rates at this time is higher than the Southern fertilizer rate level. I think they could find a great many more rates that are lower. It was my object simply to show the fact that there were numerous instances covering important movements as of today, where the rate level even today is lower than for corresponding lengths of hauls in the South. I will illustrate one case I know of. For instance, a movement from Baltimore to Buffalo on acid phosphate. I know of a movement of 10,000 tons in one season there, to that one point.

"Q. As a result of my study, I do not desire, to attempt to make the claim that, taken as a whole, the Northern rate level is lower than the Southern level. That was not my object. It is not my conclusion. In fact, I would say it was higher as a whole. Being higher as a whole, it has been my object to demonstrate how it came about, and the natural causes which produced it; the percentage increases which brought it about.

Mr. Mohr: One question.

When I say that the rate level in the North is higher as a whole than the rate level in the South, I had in mind the [fol. 713] general situation. I would say that as a whole, the fertilizer rates in the North are higher than they are in the South. If the rates proposed by the carriers should go into effect, I think that the Northern rates, would still be higher on the whole, but you see the condition that exists there in respect to Texas is really a hodge-podge there now, and one can pick out almost any kind of a rate you want, and make any kind of a picture you want in rates. We have a factory in Baltimore. Ours, perhaps is not typical; there is a lot of tonnage at Baltimore, and the destinations would be quite different from ours.

In my opinion the average haul is, I should say, probably 250 to 300 miles. (Tes. 1032-34.)

(Witness excused.)

D. A. DASHIELL was thereupon called as a witness and, having been first duly sworn, testified as follows:

My name is D. A. Dashiell, Norfolk, Virginia. I am chairman of the Traffic Committee of the National Fertilizer Association, and traffic manager of the F. S. Royster Guano Company. Our company has central headquarters in Norfolk. It operates extensively throughout the South. It operates about 14 plants in the South.

"Q. Mr. Dashiell, there arose in connection with the evidence of Dr. Bates the technical question concerning an exhibit introduced through him as to which he was not thoroughly informed. In order that the record may be rounded out, I wish you would please explain the circumstances that prompted the showing of a movement and a rate on sulfuric acid from Columbia, South Carolina, to Charlotte, North Carolina, in the case of your company, although in the case of the fertilizer manufactured at Columbia and at Charlotte by other companies, the movement was shown as from Copper Hill, Tennessee?

"A. I will say that the preparation of those exhibits was [fol. 714] distributed among different committee members. I was assigned the Charlotte, North Carolina, and was not assigned the Columbia, South Carolina. We manufacture sulfuric acid at Columbia, and we use it there, and have need also for it at Charlotte."

We manufacture our own acid, and we use the Columbia output of sulphuric acid at both Columbia and Charlotte. However, it is in the case of our company alone, having plants both at Columbia and Charlotte that such a movement occurs, and by far the greater majority, I would say 75 per cent. of our acid requirements of Charlotte are supplied by Columbia. There is some slight movement, comparatively speaking, from Copper Hill to our Charlotte plant, but I felt in preparation of the exhibit, that the fair thing to do was to show the movement from Columbia rather than show a higher rate from Copper Hill. That is to say, to show it as it actually is.

I could have shown, fairly shown, against that sulphuric acid, the freight rates which we paid on the pyrites and sulphur, and the small quantity of nitrate of soda used in

the making of the sulphuric acid at Columbia, but I did not do that. I simply took the rate from Columbia to Charlotte. For reasons of its own, whether for economy or otherwise, it just happens that in the case of our company it has been pursuing the policy of manufacturing its own acid at Columbia and using the surplus in its plant operations at Charlotte.

"Q. But, what is the normal condition at both points as to the use of acid from Copper Hill, Tennessee?

"A. I believe that most of the factories at Columbia produce their own sulphuric acid."

I would not like to state that definitely, but I know that one or two others of the other companies do, the I. A. C. Company does not, I believe; they get their acid largely from Copper Hill. That would apply to Columbia; I would say that generally throughout the South fertilizer plants are supplied from Copper Hill. The closer you get to [fol. 715] Copper Hill the more that is true. The closer you get to the ports, the less it is true.

In preparing the Montgomery exhibit, I used the tankage movement that actually takes place. In other words, I took the point from which we naturally secure tankage, which is Carrollville, Wisconsin, and moved it into Montgomery, and I show a rate of $7.10. I might say that since the movement in the spring, that rate has been advanced to $7.83, so that really the rate is higher now.

I think that's the same as the rate from Chicago, the $7.10 rate; I could not say definitely about that.

We have bought for several years the tankage, this process tankage, from a concern in Carrollville, Wisconsin. They collect waste materials in Milwaukee, Carrollville is a suburb of Milwaukee, and the material is made into a tankage and shipped out. That concern there draws the raw material there, this tankage, from surrounding areas, and is expressly engaged in the business of making tankage at Carrollville. It was asked why the same material was not purchased at Louisville; I don't know that there is a tankage plant of that character in Louisville, but nevertheless we find it advantageous to buy it in Milwaukee, and pay the freight from Milwaukee to Montgomery. (Tes. 1034-39.)

Tankage manufacture does not occur at all packing centers; this has nothing to do with the packing tankage at all. This is process tankage; it is manufactured from waste materials, of various sorts. Leather and hair and wool waste, and materials of that sort. The sources of that character of tankage are not numerous in this country; the only plants that I know of in the C. F. A. Territory is this one at Carrollville, and a plant at Lochland, Ohio, and one in St. Louis. We have a plant in St. Louis, but it is not in operation at this time.

We produce that on a large scale at Norfolk.

[fol. 716] Now, in regard to phosphate rock, the question was asked, why we did not use the Tennessee rock, why we mined our own phosphate rock in Florida, but did not have any mines in Tennessee, and by reason of purchasing rock on a large scale in Florida, we supply all of our plants, and we find it to our advantage to pay the higher rate from Florida to Montgomery than would be applied from Tennessee. I may say further, that there is a difference, I understand, in the conditions of the rock produced in Florida and in Tennessee, and our equipment is all lined up, you might say, to use rock produced in Florida, and they have not got the best results from Tennessee rock.

"Q. Broadly speaking, as explaining the whole composition of that exhibit submitted through Doctor Bates, was the effort made to show actual conditions as they are in the rates of all of the companies?

"A. I absolutely used actual movements."

There are particular reasons whether by trade advantages or manufacturing or producing costs, which account for what might on the fact seem to be factors.

During the fertilizer shipping season I give pretty close attention to the question of car supply at our different plants. I may state particularly, first, in regard to Norfolk. We have no car difficulties to speak of in Norfolk. Usually the belt line on which most of the fertilizer plants are located take care of the car requirements, and this is frequently done, I have been told, by the belt line people without having to call on the trunk line railroads largely for cars. Now, at our own plant we have materials coming

from 10 to 20 per cent of car requirements are taken care of by cars that we have made empty ourselves. Now, at Norfolk, as I say, the belt line reaches all the railroads, [fol. 717] all, I believe, except one, the V-C plant are on that line, and the belt line serves the lines from the North and the West, and from the South and there is almost always a very liberal empty car supply right there. There may be occasions where the railroads will bring a few trainloads of cars in, but my observation has been that that is simply from short distances, and maybe they could not use the cars at those particular points. Now, there is a heavy lumber movement into Norfolk from North Carolina; there is a heavy cotton movement, and a heavy tobacco movement. The Imperial Tobacco Company has two large export warehouses and terminals served by the Norfolk Southern Railroad, and they have a great number of cars coming in. In addition to that, there are shipments in large quantities of cotton piece goods coming in from North Carolina points. Now, all of these articles in large part they are moved out coastwise, or by foreign steamers, making large numbers of empty cars which are available for fertilizer loading. Now, in regard to our plants at interior points, we have inbound movement of phosphate rock, sulphate of ammonia, tankage and other materials that make empty cars, and our car requirements in some degree are taken care of in that way, but in regard to the situation generally there are fertilizer plants throughout the territory. Wilmington might ship into Charlotte's territory, and the cars made empty would be available at Charlotte. Charlotte would ship back into Wilmington's territory. You will find that going on all through the territory, and I doubt very seriously that you would find really a car shipped from Wilmington any great distance, that would be returned to Wilmington.

[fol. 718] I believe that at Wilmington and Charleston—we do not have plants at either point, but I have understood that they do accumulate cars at the beginning of the season, but after the seasons gets under way, I don't think that is necessary.

As a rule, the car requirements at an interior plant are not great. I would say that from 10 to 30 cars a day would

take care of the ordinary interior plant, and I don't think it would be a serious problem to supply that number of cars.

On those operating matters it is my observation that season of the year during which the heavier movement of fertilizer occurs, such as that it conflicts least with the heavier movements of other commodities. I think it true that it is at that time of the year when the principal movement of fertilizer comes, that the carriers are in, perhaps, best position to handle it, and if it was not for that movement at that particular time, there would, conceivably, be something in the nature of a slack period resulting, maybe, in a car surplus.

I have prepared an intimate study in regard to loading, minimum weights, and the legitimate consequences which ought to follow from the definite purpose of the fertilizer industry to bring about an advance, both in the minimumum weight and the average loadings per car from this time forward. (Tes. 1039-44.)

(The statements were thereupon received in evidence and marked "Protestants' Exhibits Nos. 436 to 440, inclusive, Witness Dashiell.")

My first exhibit, which is number 436, shows the carload minimum carried in fertilizer tariffs applicable between points in the South. It will be seen that generally the tariff minimum is 15 tons, although there are some tariffs carrying minimum of 10 tons, and in Alabama the minimum is 20 tons. Some fertilizer material tariffs carry minimum of 20 and 25 tons. Imported materials move through Charles- [fol. 719] ton to South Carolina points, taking minimum of 10 tons, and considerable tonnage is affected, particularly nitrate of soda. Charlotte, North Carolina, to South Carolina points, Danville, Virginia, to North Carolina and South Carolina points, Columbia, South Carolina, to North Carolina and Georgia points, Savannah and Brunswick, Georgia, to South Carolina points, Armour, Atlanta and Athens, Augusta and Elberton, Georgia to South Carolina points, which carry 10 tons minimum, move an important tonnage.

In North Carolina, on intrastate shipments of the fertilizer material, rate of 10 per cent less than fertilizer, takes

a minimum of 25 tons. In regard to Florida, my exhibit shows the tariff applying on interstate traffic, intrastate traffic moves on any-quantity rate.

I want to call attention to the number of points that take the 10-ton minimum at this time.

My Exhibit No. 437 shows the average car loadings of fertilizer at representative manufacturing points in the South and at the outset, I wish to direct particular attention to the average carloading on shipments from Norfolk, Virginia, because the carriers have testified that their idea of proper rates on fertilizer in the South is the scale which was prescribed by the Interstate Commerce Commission in 1918, Docket 7573. Since the decision of the Commission, these rates have been plussed 25 per cent on two occasions and reduced 10 per cent, making the present rates 42 per cent higher than the Interstate Commerce Commission's figures.

As an illustration, take the rate from Norfolk to Rocky Mount, North Carolina, Docket 7573, rate $1.90 per ton, present rate $2.70 per ton. In addition to the increase in the per ton rate from Norfolk to Rocky Mount, North Carolina, there has been an increase of 35 per cent in the average load per car, causing a material increase in the per car revenue.

The minimum weight was prescribed governing the pre- [fol. 720] scription of the Royster Scale, in Docket 7573—15 tons. This increased revenue per car is illustrated by again taking the rate from Norfolk to Rocky Mount, North Carolina, Docket 7573 rate, $1.90 per ton, average car loading 17.02, which was the car loading of record in that case, produces $32.34 per car revenue. For 116 miles the per car mile revenue is $27.88. The present rate from Norfolk to Rocky Mount is $2.70 per ton. At an average carloading for March 1925 of 23 tons, the per car revenue is $62.10 or 53.53 cents per car mile. It will be seen from this that the revenue per car and per car mile from Norfolk to Rocky Mount, North Carolina, have been increased 92 per cent. When the carriers advocate the Docket 7573 rates, they should bear in mind that the decision in that docket was made on the record that showed an average carloading of 17.02 tons, as of that time.

That was the average carloading from Norfolk to North Carolina points for the year 1913, which information I prepared.

The carriers could reduce the per ton rates of the Royster scale 26 per cent and still earn per car revenue equal to the present Royster rates figured at per car loading of 17.02 tons. It will be noted that the average carloadings from the South Carolina plants are about the same as from the Norfolk plants and the North Carolina plants. In Georgia it will be seen that the averages are generally higher than in Virginia, North Carolina and South Carolina. The average car capacity on interstate shipments reflects the tariff minimum to South Carolina points of 10 tons; in Alabama the averages are higher than in the other States. From plants moving a large part of the tonnage the averages are from 24 to 29 tons. The minimum became 20 tons in Alabama in July, 1924. That was one of the incidents of the revision of rates in Alabama under attack in this proceeding. Prior to that time the minimum weight in Alabama was 15 tons.

As shown above, the average carloading from Norfolk to [fol. 721] North Carolina points has increased 35 per cent. This is illustrated by again taking the per car revenue on shipments from Norfolk to Rocky Mount, North Carolina, at rate of $2.70 per ton, 17.02 tons, would produce per car revenue of $45.95; using a rate of $2.70 per ton, 23 tons, would produce a per car revenue of $62.10, an increase of $16.15 per car, or 35 per cent.

Add the average car loading in 1913, then 23 tons instead of 17.02 tons, the Interstate Commerce Commission would doubtless have prescribed a lower per ton rate.

If we were to assume that the per ton rates of the present Royster Scale are a fair basis on an average carloading of 17.02 tons, then when the carriers are given an average loading of 23 tons, the rate per ton might be reasonable reduced.

My Exhibit 438 shows the number of cars containing fertilizer shipped from important manufacturing points for each tonnage unit. It indicates at a glance that numbers of cars are shipped containing less than 20 tons, and the value to the carriers of an increase in the tariff minimum

to 20 tons is readily apparent. From Norfolk, 31 per cent of the cars shipped during March, 1925, contained less than 20 tons.

There is throughout the exhibit to be a considerable number of cars shown to have weighed exactly 20 tons. You will notice the greatest number of cars appear in multiples of five. You will notice 15, 20, 25 and 30. Well, in the States other than Alabama the minimum is 20 tons—the minimum is 15 tons—in Alabama it is 20 tons. I don't just understand what your question is. I would answer your question by saying that the people to whom we sell doubtless adjust themselves to taking fertilizer in units of 20 tons, to a large extent.

"By Com. Eastman:

"Q. I notice there are three cars loaded to 50 tons—was that some special material that loads that way?

"A. Mr. Commissioner, my figures do not include fertilizer materials. These are finished fertilizers. Now, we have a movement of fertilizers to some storage warehouses. For instance, there is a storage warehouse that we use, or at least that we ship to, at Henderson, North Carolina. Now, we might send 100 tons or 200 tons of fertilizer to that [fol. 722] warehouse, and we will load as much in the car as we can get. Now, that is distributed locally."

Heavy cars, you take these big automobile cars, and furniture cars, it is possible to load up to 50 tons.

I would say that we get a greater number of 80,000 capacity cars; there are some 30,000 capacity cars. I mean 60-ton capacity cars. I think it is generally possible to physically load fertilizer to the capacity of the car, but it is not always feasible to do that. Sometimes fertilizer will become hard when numbers of bags are piled on the bottom layer, and commercial conditions, I believe, have adjusted themselves to take a minimum of 20 tons, and I doubt whether it would be advisable to go beyond 20 tons as a car minimum. It is doubtless true, when we fix the minimum at 20 tons, even there that is a minimum dictated quite largely by trade conditions rather than by physical loading conditions.

The trade has not as yet accommodated itself to the 20-ton basis; I believe they are working to that end. In making this effort to accommodate the trade to a 20-ton basis, it is my belief that it will result in a considerable increase in the actual average loading as it takes place today. Along that line, I took the shipments that I have in this exhibit from Norfolk, and eliminated the cars containing less than 20 tons, and it produced an average for the remaining tonnage of 26.4 tons. In regard to the question of car loading, I might say this, that the fertilizer manufacturers have been gradually working to the end of increased car loading. Ten years ago 10-ton minimum was pretty generally the practice, was pretty generally carried in the tariff, but the manufacturers have cooperated with the carriers in every way towards increasing the loading, and I believe we are seeing the effect of it. (Tes. 1054-1051.)

In coming forward here with the tender of cooperation on the part of the industry to accom odation of such industry to a 20-ton basis, that in itself involves a consider-[fol. 723] able change in the existing trade practices. It holds forth the promise of a rather considerable material average increase in the existing average load per car, and is understood to be such and intended to be such in the determination of this rate level.

"By Com. Eastman:

"Q. When it comes to the physical loading, if you could not load 30 tons to the car?

"A. Yes, sir, that is true, sir."

I answered a minute ago that with a 15-ton minimum our average from Norfolk was 23 tons. Now, when I eliminated cars containing less than 20 tons, it produced an average for the remaining tonnage of 26.4 tons. So if the minimum were to be made 20 tons, the average would be at least 26 tons, or in excess thereof.

Fertilizer moves, however, by actual experience, a proven fact, that where the carload minimum on fertilizer has been increased, the actual loading per car has been proportionately increased. The experience at Norfolk shows that in 1913 the average car loading was 17.02 tons, with a tariff

minimum 10 tons, and in 1915, with a tariff minimum of 15 tons, the average load per car was 23 tons on complete fertilizer.

My Exhibit No. 439 shows from actual experience the results flowing from an increase in the tariff minimum. From Norfolk, an increase of 5 tons in the tariff minimum produced a 35 per cent increase in the car loading. From Columbia, South Carolina, 20.3 per cent, from Hartsville, South Carolina, 11.5 per cent, and from Montgomery, Alabama, 13.3 per cent. I might say in that connection that the increase from Norfolk of 35 per cent represented a development of several years, whereas, the increased loading from the South Carolina point was one year against another, and the same is true regarding Montgomery, Alabama. There have been just these few instances where the tariff minimum has been increased within the last two or three years, and for that reason this exhibit could not be more elaborate, but [fol. 724] I believe that these four plants that I have shown here are typical of the situation.

To show the value of the Alabama average car loading, take for example, the experience of the F. S. L. Guano Company, of Montgomery, Alabama. The average for all single lines 98.6 miles. The present rate for this distance, $1.95 per ton, using an average carload of 29 tons produces $56.55 per car revenue, or $57.35 per car mile. By agreeing to an increase in the carload minimum on fertilizer throughout the South to 20 tons, the fertilizer manufacturers are convinced that they are making a material contribution towards economical operation on the part of the carriers. Between certain points it means an increase of 10 tons in the tariff minimum, and in other instances an increase of 5 tons. Experience has shown that an increase in the tariff carload minimum of only 5 tons has resulted in increased loads per car of as much as 35 per cent. Increasing the tariff minimum from 10 to 20 tons, necessarily increases the actual carloading considerably. Increased car loading means increased efficiency of freight cars, and an immense saving is effected.

There was consumed in the South during the year 1924 more than 4,000,000 tons of fertilizer, which, according to the average car loading in 1913 would have required 235,000 freight cars; at the 1925 car loading, 173,913 cars would be required, a saving of 61,087 cars.

The 235,000 cars used for the transportation of 4,000,000 tons of fertilizer at the 1913 average loading, would, on the 1923 average loading, handle 5,405,000 tons of fertilizer, and the 61,087 cars diverted from fertilizer traffic would be available for the handling of 1,403,000 tons of other freight, at an average car loading of 23 tons.

My Exhibit No. 440 deals with the average weighted hauls, carrying shipments of fertilizer from plants through- [fol. 725] out the South during the month of March, 1925. The exhibit speaks for itself.

Generally the average haul from the ports is in excess of 100 miles, while the average from the interior plants is less than 100 miles.

Well, if the figures contained in this exhibit are an indication of the facts, making allowance for the volume of business shipped from the ports, it is probable that the average haul would be about 125 miles; that is, if you would lump all of the tonnage. I think it would be in the neighborhood of 125 miles. I have not made that calculation. It is just an impression, that is all it is.

My testimony and exhibits regarding the average carload and average hauls, have covered complete fertilizer shipments only. Fertilizer materials moving to fertilizer plants load considerably heavier than does fertilizer. I took 116 cars of fertilizer materials, moving to various plants, and the average load was 35 tons. Materials are usually ordered in 100 or more tons—in units of 100 or more tons—and the possible loading is usually only limited by the capacity of the car.

I would say that on fertilizer materials, except possibly nitrate of soda, 25-ton minimum can easily be loaded. In regard to nitrate of soda, I believe there is some movement in 15-ton lots, and maybe in 10-ton lots, or where they can get the carload rate, there is some less-carload. There is some substantial movement of nitrate of soda for direct application to the soil by the farmers, and in those cases, the units of purchase are smaller than the commercial units used in the manufacture of fertilizer.

Usually fertilizer materials move from one plant to another, or from the ports to the plants, and as I have stated before, they move in large quantities, and usually the cars can be fully loaded.

[fol. 726] The lengths of hauls of fertilizer materials vary considerably. Materials will frequently move distances ranging from 100 to 1,000 miles. This is due to the fact that certain materials, such as tankage, fish scrap, etc., are produced at a few points where crude materials can be secured, and the finished product is shipped over a wide territory. Sulphate of ammonia is produced generally at the steel plants, and potash and nitrate of soda, as well as other imported materials, move to the ports and are distributed throughout the territory. The range or distribution of fertilizer materials is materially greater than the hauls of completed fertilizer. That is all. (Tes. 1051-56.)

[fol. 727] Cross-examination:

These exhibits include only the complete fertilizer and do not include the materials. The figures in Exhibits 437 and 438 do not include any shipments from one of our plants to another. They refer to shipments entirely from our plant to our customers. The same figures were used in working up both exhibits. A great many people will order fertilizer in as small units as they can get it. With a tariff minimum of 15 tons, you will naturally have just a great many orders of 15 tons, but if that minimum is advanced to 20 tons, those same people will order 20 tons. It may be true that several small farmers combine and buy a carload of fertilizer, but I do not think to any great extent it may be done. I don't know if that is done to any extent. If that is a very common practice, it is not to the advantage of those farmers to buy a 15-ton car rather than a 20-ton car; they could get another fellow to go in and take the extra 5 tons; usually when a car of fertilizer is shipped to a merchant it is generally unloaded by 5 or 6 people. I don't think these relatively large number of 15-ton shipments is explained by any two or three farmers getting together. I think, if two or three farmers get together, they would order in larger units than 15 tons. I think that 15-ton shipments go to one individual; I have not investigated it, but I could find out if you think it is material.

This compilation does not include acid phosphate. If it included acid phosphate, you would find a much higher per car loading. You would find fewer cars moving at 15 tons, because acid phosphate seldom moves in just 15-ton lots. You would find a person placing an order for 50 tons, or 100 tons of acid phosphate. You might find a person ordering just 15 tons of acid phosphate. I know that. I don't think it representative that several farmers combine and order 15 tons of acid phosphate and mix it on their own farms, but I am not in the sales department. If I included in this exhibit shipments of materials such as acid phosphate, etc., [fol. 728] and other materials which one or two farmers buy by the carload and mix themselves, that the number of 15-ton shipments will show even greater than it does on this exhibit, because if you will examine the tariff you will see that there are some material rates lower than the fertilizer rates, that carry a 25-ton minimum, some few that carry 20, and some 25. A person that is going to order acid phosphate has a material rate, and he will generally order that minimum to be 25 tons. (Tes. 1057-60.)

As to how I arrived at my determination to use the tariff shown in Exhibit 436: I went through the tariffs, and took the information from the tariffs. I did not attempt to show all of the tariffs in effect throughout the South. My purpose was to show in condensed form the tariffs that would show the situation throughout the South, without referring to each individual tariff. You will find that in North Carolina, intrastate, I used Southern Railway tariff. You will find in South Carolina, intrastate, I used—I think A. C. L. tariff, and I could have shown all of the tariffs, but I did not think that was necessary.

The exhibit that Dr. Bates filed, referring to destination points as follows: Norfolk, Charlotte, Charleston, Spartanburg, Hartsville, Augusta, Atlanta, Columbia, South Carolina, Americus, Montgomery, Mobile, Memphis, Jacksonville, and Charleston, South Carolina: I will say that the material in that exhibit was prepared by the different companies. We assigned a few points to each company. Now, I prepared the information regarding Norfolk, Charlotte and Montgomery. The Virginia-Carolina Chemical Co. prepared it regarding Wilmington, Mobile and Jackson, Miss. Swift & Co., Wilmington and Atlanta.

The International Agricultural Corporation, Columbia, S. C., Hartsville, Spartanburg, Augusta, Atlanta and Americus, Ga., and Armour & Co., my recollection is, Jacksonville and Nashville, if they appear there. I was giving you those from memory; I remember we assigned information regarding all of these various subjects, average haul, and average carload, and that material too. We can give you [fol. 729] the information at Wilmington and at Nashville. (Tes. 1060-63.)

Also the information at Montgomery for some other plant than the Royster plant. Armour Fertilizer Works will supply the Nashville information, I presume. We endeavored to make the exhibit representative of the two situations. In regard to the exhibits that I prepared, and I believe it is true of the others, the rates shown in that exhibit cover actual movements—either a substantial part of the tonnage, or the entire tonnage.

We show both of the plants of the I. A. C. Co. and Swift & Co. at Atlanta to give you the true situation at that point. Now, the I. A. C. Co. secure their sulphuric acid almost entirely from Copper Hill. From Copper Hill to Atlanta they have a rate, I believe, of $1.75 a ton. Now, while they have that advantage to Atlanta, when they use acid at some other point, take in the neighborhood of Montgomery, they pay a rate of $3.40, the comparison would not be quite so favorable to them. Swift & Co.'s inbound charge is $3.65, the I. A. C. $3.19; Swift, $2.54, and the I. A. C. $1.67, indicating that Swift & Co. were sending theirs out longer distances.

Exhibit 440, in connection with Dr. Bates', will show the differences in the average distribution by the two companies at Atlanta. Atlanta, Ga., the I. A. C. Corporation, the intrastate single line average weighted haul is 44.7 miles, while the intrastate single line haul of Swift & Co. is 89.4 miles. That comparison is true in regard to the other hauls.

The rate to Montgomery from the Mt. Pleasant District is $2.82, a net ton, the same as to Mobile, shown on sheet 6 of the exhibit. The rate from Florida to Montgomery is $3.82 per net ton; there is a difference of $1.00 in the phosphate rock; that would mean about 25 cents in the ton of fertilizer. This phosphate rock used is not the same in both

cases; the rock they mine in Florida is known as 68, B. P. L., low grade rock; I understand the rock produced in Tennessee generally is a higher grade.

[fol. 730] "By Mr. Mohr:

"Q. Then you could obtain a higher grade rock at a lesser price, but for the fact you have your interests in Florida, producing rock?

"A. Lesser freight rates.

"Q. Yes.

"A. It would amount to about 25 cents a ton.

"Q. But it would amount to $1.00 a ton in the calculation made in this Exhibit 325?

"A. On phosphate rock. $1.00 a ton for phosphate rock, but not for acid phosphate." (Tes. 1063-66.)

As to what fixes or controls the quantity of fertilizer loaded in those cars less than 20 tons: We fill the orders as they are given to us, but we frequently importune our customers to order in larger units. The orders are filled as they are placed. The orders are predicated upon the desires of the receivers of fertilizer; I don't know just what their needs are. There may be some difference between their desires and their necessities.

If the carload minimum is advanced to 20 tons, and the receiver of fertilizer realizes that he can only secure a carload rate by ordering in 20-ton units, he will generally order 20 tons. I think really the reason that numbers of cars of 15 tons of fertilizer are ordered, is simply because the tariff minimum is 15 tons. Now, there will be some objection on the part of the people to the higher minimum, but I believe in the interests of carriers' efficiency, we should work to the end of securing 20-ton minimum, and avoid waste space in cars to the extent that we can. I say the usual buyer of fertilizer buys a considerably greater quantity each year than 20 tons, and I believe that he could accommodate himself to ordering in 20-ton units. The difference of 5 tons in a farmer's needs would not be a very great item. We are not starting something here to force the farmer's hand. It is a desire to utilize the carriers' equipment to the best advantage we can. This is our only desire. (1066-69.)

There is no other desire than to fully utilize the carriers' [fol. 731] equipment. It would be expensive to us to load 20 tons in the car as against 15 tons carload minimum.

Referring to Exhibit 325, pages 4 and 5: I have the I. A. C. at Atlanta, page 4, and Swift & Co. in Atlanta, page 5. So far as the movement of the acid phosphate inbound is concerned, it appears that the freight charges are exactly the same, $188.99, and then right under that, average inbound cost per ton in cents, which is the same in each instance, $3.02. Then appears the average outbound costs per ton in cents, $1.67, in one case, and $2.54 in the other. You take in the case of the I. A. C. Co. the average outbound cost per ton in cents, $1.67, the average per ton in cents, of $4.69, that represents the average in and outbound cost of acid phosphate. Then farther down, where you find the figure of average per ton in cents $4.68, that is complete fertilizer. As to how it happens that the outbound cost of acid phosphate is exactly the same as the outbound cost of the complete fertilizer and whether that means that I assume that the shipments will be made from the same points in both cases: Yes. That figure of $2.54 was the average outbound freight cost on shipments to customers, including both mixed fertilizer and acid phosphate shipments. The average inbound cost of the complete fertilizer was $3.19 in the case of the I. A. C., and $3.65 in the case of Swift & Co. The freight charges inbound on the acid phosphate are exactly the same; their source of phosphate rock and sulphuric acid were the same, but the other materials different. (Tes. 1069-74.)

[fol. 732] Tridwell Rice Crown was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is Tridwell Rice Crown, division superintendent of the American Agricultural Chemical Company, headquarters Atlanta, Georgia. I have been division superintendent of that Company for three years. I had no prior experience with other fertilizer companies. I had

superintendency of plants for 10 years for this company.

Under my immediate jurisdiction there falls the problem of cleaning and conditioning freight car equipment tendered to me for use in the transportation of fertilizer.

At every plant, depending upon the size, we employ from two to four men and their exclusive work consists in cleaning out the refuse, trash and so on, driving down nails and carting the material away that is removed, and disposing of it, in teams or trucks.

I approximate the average cost of that cleaning which has to be done in the manner I have described as from 40 to 50 cents per car. (Tes. 1074-6.)

C. W. Hayward was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is C. W. Hayward, residence Meridian, Mississippi. I am representing the Meridian Traffic Bureau. I might say at the outset that the Meridian Fertilizer Factory is in accord with the case as presented by Mr. Cotterill on behalf of the National Fertilizer Association, and it will be my purpose not to enter into an extended discussion of the rate situation, or of the proposals of the [fol. 733] carriers, except to submit two small exhibits showing the present rates from Meridian to points in Alabama on the Alabama Great Southern, the Southern Railway, and the Mobile & Ohio Railroad, as compared with the carrier's proposed scale, and the National Fertilizer Association's proposed scale.

Now, I will submit these Exhibits Nos. 441 and 442.

(The statements were thereupon received in evidence, and marked "Protestants' Exhibits Nos. 441 and 442, Witness Hayward.")

We are in accordance with the principle of equalization, which we understand it is the purpose of the Commission to effect by this investigation. We have discriminations against Meridian not only in the intrastate rates in Alabama, but also in the interstate rates from manufacturing points in Mississippi and from points in Georgia.

In my exhibit 442, I show a comparison of the rates from Meridian, Mississippi, to points in Alabama and Georgia, compared with rates for similar distances from Montgomery and Atlanta to points in Alabama, Georgia and Mississippi.

The rates as shown from Montgomery were taken from the Atlanta & West Point Fertilizer Tariff, 1035-B, I. C. C. 1145, and are specific rates. Since this statement was prepared, I understand that the Alabama Commission has adopted a scale of mileage rates, and there may be some differences as between the rates I have shown and those adopted by the Commission, if so, I will submit a correct exhibit. (Tes. 1076-1078.)

Fertilizer was in the Meridian Case. As to what was done with the rates on fertilizer in the prescribed zone in Alabama in that case: I will explain that. On my Exhibit 441, the rates to Alabama Great Southern and Southern Railway stations, and Mobile & Ohio stations as shown, were the rates as prescribed by the Commission in I. C. C. Docket 9560.

[fol. 734] They are the rates that now apply from Meridian to the zone covered by the Commission's order in the original Meridian Case, 200 miles from Meridian by way of the lines of the respective defendants. Now, those rates, so far as the jobbing points in Alabama, affected by the Commission's order are concerned, are equalized with Meridian, but it will be recalled that the Commission has only recently voided their order in the Meridian Case. Now, we apprehend that it is entirely possible and not altogether improbable that rates will be established by the State of Alabama or the Public Service Commission of Alabama within the Meridian zone that will be in accord with the scale that was prescribed by them for application between other points in the State, and if that is done, it will be easy to see the effect on Meridian.

The last column, which is the National Fertilizer Association's proposed scale, and is the same as the Alabama scale, will indicate to what extent we will be affected unless an equalization is accomplished by an order of the Commission, and the Alabama Public Service Commission adopts these rates within the Meridian rate case zone.

In my exhibit No. 442 it will be seen that the rates from

Montgomery and Atlanta into Alabama, Georgia and Mississippi for distances, similar distances from Meridian to points in Alabama and Georgia, are materially lower than the rates from Meridian. After we pass 100 miles on this scale, the rates from Meridian and the rates from Montgomery, Alabama, are both interstate rates; we have from Meridian to Atlanta for 319 miles the rate of $3.60, and from Atlanta to Meridian for the same distance, of course, a rate of $3.15, so without going into detail and stressing this comparison, Mr. Examiner, we want to repeat our [fol. 735] statement that we think equalization should be effected, that these discriminations should not be permitted, that we do not see any reason for maintaining a higher rate from Alabama to Meridian than from Atlanta to Meridian, than from Meridian to Atlanta. And, by the same token, any lower rates from Montgomery and Atlanta towards Meridian than from Meridian in the opposite direction over the same rails. (Tes. 1078-1080.)

We have a large fertilizer factory in Meridian. They operate three factories, one in Meridian, one at Hattiesburg, and one at Shelbyville. And fertilizer is a commodity that is not necessarily limited to a restricted zone of distribution. The Meridian Fertilizer Factory can and does ship into Alabama, Georgia, Florida, and all over the Southeast, wherever they may place their product, and I do not know to what extent, whether they do to a very large extent, but it is not a commodity that is limited in its distribution.

As to the movement into Mississippi, I know that there has been a movment from Alabama—possibly Montgomery, Alabama, into plants surrounding Meridian, into our trade territory and that has been possibly largely because of these discriminations in favor of the Montgomery shipper, the Alabama shipper. I don't know that our factory ships into Georgia, now. I would not be in position to state definitely that they are covering those States to any extent, but I say it is possible to do it, just as it is possible for Atlanta or Montgomery or Birmingham or any fertilizer manufacturing point to ship into Mississippi, but we think that rates from Meridian into Alabama and Georgia should be on the same plane, same relative plane, as rates from fertilizer plants in Alabama and Georgia to Mississippi.

[fol. 736] Our plant is a manufacturing plant, it manufactures sulphuric acid. I understand that it is a complete fertilizer plant, quite a large size plant. The name of it is The Meridian Fertilizer Factory. (Tes. 1080-1.)

Cross-examination:

Concerning whether, in expressing the points of view which I have as to the importance and desirability of assuring that the transportation charges on fertilizer from Meridian to Alabama and other States be made on the same common rate level as prevails within those other States, and in behalf of the fertilizer company I appear for, my view holds equally good as to the matter of a parity of rates from other States to Mississippi and within the State of Mississippi: I refrained from discussing that, for the reason that I understood the Mississippi intrastate rates were not involved in this proceeding, but I am perfectly frank in saying that I could hardly adhere to the opinion that the rates should be equalized from Meridian, and not equalized into the State of Mississippi with other interstate shipping points. I think it is perfectly proper to concede that we must face that sooner or later, and I am perfectly willing to admit that we have to have rates established somewhat on the Shreveport principle.

On Exhibit 441, the rates shown there for the Alabama Great Southern, and the Southern, and also for the Mobile & Ohio, are the rates that were prescribed in the Meridian Case. My impression is that the fertilizer rates fixed in the original Meridian Case were based on the Alabama Great Southern scale. That is my impression. I am not positive that that was done, but there may have been some changes [fol. 737] in the grading, possibly, after the I. & S. proceedings were instituted, they may have changed that scale.

I don't see any similarity in the two scales. The carriers' proposed scale, as I understand it, is the Third Royster Scale, and the first column shown on my Exhibit 441 are the rates prescribed in the Meridian Case. They are higher in some instances and lower in others, that is true, but I don't see that there is anything in there to lead to the conclusion that the Royster Scale was adopted.

Concerning whether I expressed myself in a case about a reduction when those rates were established, as satisfied with those rates, and advocate their establishment in the I. & S. case: I think that in my exceptions to the proposed report, that I did advocate the Royster Scale in the absence of any other scale that might have been submitted, because of the fact that a most comprehensive investigation had been made in the Royster Case. Three hearings having been held, and I think was the only case involving fertilizer rates in the South where a comprehensive investigation had been made. I think when the Royster scale was put in by the Commission after three hearings, it was the most extensive hearings that the Commission had ever held in respect to fertilizer rates in Southern territory. But it is altogether possible that the rates now made in the South are made on or with regard to distance, and that if a distance scale were established, you would now have on the whole a lower level than if you made them without regard to distance. I say, when you adopt a distance scale of rates, you would have to perhaps adopt a lower level than you would if you were grouping the rates on a whole. Under [fol. 738] the Royster scale they are made on a distance basis, but it was made under possibly different conditions than between Mississippi and other Southeastern States. (Tes. 1081-84.)

"Q. Yes, but you recall, do you not, that the opinion was expressed in the Meridian Case that perhaps the rates on fertilizer might be higher in your territory than in the Carolinas?

"A. I think there was some reference to the possible difference in operating conditions."

In other words, I think the Commission commented on the fact that there was no showing as to similarity of conditions as between the two territories.

As to why I say that the Commission prescribed rates in the Royster Case in a comprehensive investigation: I thought that after three hearings they might have been in a position to judge what the rates might be, better than they would have been had only one hearing been held, but I did not intimate that that was the proper measure of the

rates today that should be established, and don't mean to intimate that at all.

I have read the Commission's decision in the Blackshear Case. I don't recall what they said about the Royster Scale. I could not express an opinion as to whether there will be more movement of fertilizer in the Royster Case in one year than there will be under the Blackshear Scale in 15, in the territory involved, where the two scales apply. I don't think what I said in the Meridian Case ought to be used against me in this case. (Tes. 1084-86.)

[fol. 739] Edward A. O'Neal was thereupon recalled as a witness and, having been previously sworn, testified further as follows:

Redirect examination:

"By Mr. Cotterill:

"Q. Mr. O'Neal, you have been recalled at the suggestion of the Commissioner in reference to the matter of the minimum weight on fertilizer. During your absence from the hearing this morning, there was submitted in the record through me, data tending to justify and establish the propriety of a uniform minimum weight of 20 tons of fertilizer throughout the South. There seemed to arise some question as to the extent such proposal could be regarded as being warranted by my representation in this case. In response to a direct question, I stated that I understood that I was authorized by you in your capacity as representing the various farm organizations whose appearances I have entered, to say that you did, in terms and in fact, concur in that proposal?

"A. Yes, sir."

As to whether the matter of the minimum had been submitted by the various farm bureaus to the individual farmers, and any effort been made to obtain an expression of opinion from the farmers generally: I will say this, that in Alabama that the farmers were very much delighted by it, except in a few localities. This is rather indirect, but I will give you the setting first. We thought that they

would probably object to this 20 tons, but I can show you in my files in the office a good many letters in which the farmers raise sand, because, for instance, we voted 20,000 tons of acid phosphate last year from the Southern Agricultural in Atlanta, and under the Interstate Commerce [fol. 740] Commission, and the rules of the people over there at the factory, they only put 15 tons, while the farmers were raising sand because they did not fill those cars.

Now, in Alabama we had no trouble whatever except probably in one or two very remote counties where evidently it is hard to get up a carload. Now, that is the exception that proves the rule. As a rule, if you are a railroad man, of course this is another phase of it, I see one sitting over there that solicits business for delivery. As a rule, the farmer raises Sam Hill that he cannot get his fertilizers in time in the spring of the year. When he gets it, he wants it all probably, Mr. Commissioner, in a week, and the faster the railroad gets it out the better he likes it, and the fuller the car the better he likes it.

Our cooperatives in Alabama distribute it economically, due to the fact that there is no storage, and they take it from the car door, and I have seen as many as 25 or 30 wagons at a station, and if that carload of fertilizer don't arrive, or several cars, those farmers are on the long distance phone, or the wire, raising sand with the railroad. Now, they don't object. Now, in answering for the rest of the States, there is practically very little difference. But I have never brought the direct question to Mississippi as a part of this case, or Tennessee as a part of this case, and Louisiana, I have never brought that up to them, but I presuppose conditions are practically the same with farmers throughout this territory, cotton farmers.

For the purpose of my position in this proceeding, in the deliberations of the executives of those different State [fol. 741] Associations, there were adopted finally appropriate resolutions which were intended to authorize me to assume responsibility for various matters of policy under which I presumed I was authorized to take this position. And, so far as you know, I am authorized to do so, and do do so by virtue of those resolutions. If I have done anything wrong they have not informed me yet, but they gave me carte blanche, as you know, to answer for them, and I

think though that the psychology in Alabama is practically the same in the other States. I will take the responsibility for it anyway.

My testimony on yesterday was to the effect that a certain percentage of our farmers in Alabama got their fertilizer ordinarily through the cooperative association. The Association will order the fertilizer to be shipped to a certain point, and the individual farmer will come there and get his supply through the Association; the Association is organized on the same system as the Federal Government; each County has a local organization and in each county there is a community organization. That carload of fertilizer, when it comes, would hardly ever be consigned to the individual farmer or the Association unless instructed by that county unit. For instance, there are 67 counties in Alabama, we have 62 county Farm Bureaus. Now, the county unit does not purchase—it only collects money and does the distribution, handles the distribution, sending us the orders to the State office, and we then direct the man from whom we purchase to ship to this railroad station in that county, to the county Farm Bureau. In some instances it is an individual farmer. There are some large farmers that take several carloads; mostly, though, it is the small farmer that probably uses two or three tons, and they all join together, and come and get their fertilizer on a set date. [fol. 742] I am not sufficiently familiar with the facts pertaining to the purchase of fertilizer by farmers other than those operating through the farm organizations, to say whether or not it is a common practice for them to combine when necessary to purchase a full carload, because usually that is arranged by their local fertilizer dealer. I know this, in some instances in the spring of the year, I have witnessed this; that you see on the side track in a little town like Clanton, up here on the L. & N. Railroad, and Chilton. I was over there last spring, and there was a fertilizer dealer there, and he just delivered this fertilizer right out of the car.

The railroad men and the fertilizer men are probably more familiar with that than I am. (Tes. 1086-91.)

THOMAS J. BURKE was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is Thomas J. Burke, Commissioner, Charleston Traffic Bureau, Charleston, South Carolina. I am likewise a member of the Transportation Committee of the National Fertilizer Association. I am also connected with the Port Utilities Commission of Charleston; I am secretary of the Port Utilities Commission of Charleston. In that particular capacity I have been charged with considerable duty and familiarity respecting the matter of port charges, and charges at the various South Atlantic and Gulf Ports; I have been required to make myself familiar with the port practices, and the charges at the different ports.

From a shipper's point of view, I would say prior to January 10th, 1921, that the port charges were nominal.

"Q. As of that time, were the railroads themselves op- [fol. 743] erating substantially all the port terminal facilities, with the exception of the Government terminals at New Orleans and at Norfolk?

"A. There is another exception to that, that is at Jacksonville, there was the Municipal Terminals at that point."

"By Com. Eastman:

"Q. The Government Terminal at New Orleans, is the Municipal?

"A. No, the Army Base Terminals, of course, at the ports, and they have been taken over by either municipality or private corporation at that time.

"By Mr. Cotterill:

"Q. When I spoke of the Government Terminals at New Orleans, I meant the State Terminals, as I understand they are State Terminals.

"A. The Dock Board."

Effective as of January, 1921, the port terminal charges affecting imported fertilizer materials were very materially increased. There was no coincidental reduction in the line-haul rates. There were later proceedings before the Com-

mission in which the measure of such increased charges was drawn in question; there was the hearing in I. C. C. Docket 12681, which was an investigation at the ports, Norfolk and South Atlantic and Gulf ports, into the wharfage, storage and handling charges at the various ports.

In the Examiner's tentative report in Docket 12681 the handling charges on fertilizer material were ordered reduced 35 cents a ton in the I. & S. From 50 cents a ton to 35 cents a ton, and later, in the I. & S. proceedings which followed that, the Commission approved a reduction from 50 cents to 30 cents a ton, which is the charge now in effect. It was proposed by the carriers. Such port terminal charges [fol. 744] as later modified by the Commission are still materially in excess of what they were prior to January 1, 1921. In the intervening time between January 1, 1921, and the present, the carriers relieved themselves in large measure of the operation of the various port terminals along the South Atlantic Coast; the carriers sold in July, 1922, the properties that they held in Charleston, South Carolina, to the Port Utilities Commission; later the Seaboard Air Line leased its dock at Wilmington to a private enterprise; and also leased its dock at Charleston to Mr. Fred Richards, of that city, who operates the fertilizer terminal at Charleston. The carriers still retain their terminals at Savannah. I would not say that Savannah alone is practically the only place on the Atlantic Seaboard where at this time the principal port terminal operations are operated by the carriers as private agencies. If we include Norfolk, the carriers have terminals at Norfolk and also terminals at Savannah. (Tes. 1091-94.)

There has been a change at Norfolk quite recently. And there is a private enterprise or corporation that is operating the Army Base Terminal which was leased from the Government by the Norfolk Municipality. By reason of the practical necessity of maintaining substantially the same port terminal charges at all the ports, it is a fact that the increased charges effective at Savannah, and at such other places as the carriers themselves perform the services, have influenced and controlled the measure of the charges by the port authorities, where the municipality or the State or private parties are operating the terminals; that is controlled by the charges at the private terminals. In con-

clusion on that whole subject, there has not been at any time a compensating decrease in the line-haul rates on these [fol. 745] imported fertilizer materials corresponding to the advances in the terminal charges, when the carriers concluded upon the policy to discontinue the making of nominal port terminal charges; there has been no change in the import fertilizer material rates. The current line-haul rates reflect the same measure of charge as prevailed when the separate terminal charges were on a nominal basis. That is an additional factor which it is desired the Commission take into its account in the measurement of its new rates. There has been no convenient opportunity until this time to bring forward the suggestion of a reconstruction of the line-haul rates in compensation for the change of policy which produced advanced port terminal charges; this is the first opportunity we have had to present that question.

It is understood that the line-haul rates will be subjected to the additional imposition of a port terminal charge. In other words, the measure of the line-haul rates here advocated is not to be understood as being shipside rates on those materials; the wharfage, storage and handling charges are to be in addition to the import rates on line-haul rates from the ports.

"Q. And, incidentally the Exhibit No. 443, which I understand you tender in evidence, will set forth that on a typical movement of imported material, the aggregate port terminal charge will be in the neighborhood of how much per ton?

"A. By the present day charge?

"Q. Yes.

"A. If it is handled direct from shipside to cars, it would be 50 cents a ton; that would include 20 cents wharfage and 30 cents handling, which would be in addition to the import rate."

If it is stored for 30 days or a fractional part, there would be a charge of $1.00; that would be a wharfage charge of [fol. 746] 20 cents; 30 cents into storage, storage charge 20 cents, and 30 cents handling out of storage. That would be a transaction in the handling of fertilizer material at the port. It may be assumed that in the importation of these imported materials, the commodity begins with a load

of about a dollar, before the line-haul transaction begins. Subject to such revision of those port terminal charges downward or upward as may occur in the course of events, it is presumed that the separate addition of those charges will be continued. As applied to the movement of imported materials to a given interior destination from that port which is nearest to it by railroad mileage, it is the concensus of view that the general mileage scale shall be charged; that is the way we want to make that import fertilizer rate. There is no suggestion here that the imported materials be treated as preferential commodities in the making of the interior domestic rail rates. The underlying key to the rate structure by the mileage scale applicable from the port which fixed the rate to a given destination. That is the rule that has been pretty generally followed in the making of import and export rates. The rates that we have at present in effect on the import fertilizer material, have been in effect for a number of years, and I presume very careful check of these figures with the rates was made from the nearest port, using some given figure, and the rates from the other ports were equalized with that rate. By reason of some of the recent changes in intrastate rates, the carriers have restricted the operation or application of those new intrastate rates in such way as to exclude them from application to imported material, where the shipment is strictly an import movement.

[fol. 747] "Q. Where the identity of a shipment is known and regarded as a strictly import shipment, you say it has come about recently that the movement from a port to a point in the same State will not occur under the more recently made intrastate rates, but under the formerly prevailing rate level, generally speaking?

"A. And when a shipment of that kind would move on the formerly prevailing interstate rate, which is higher than the recently reduced intrastate rate."

If we take an imported movement of materials to points in the State of South Carolina from Charleston, such movements have not in fact so far been affected by the reduced rates of the South Carolina Commission. Subject to that present condition, which presumably is of a temporary character, I intend to adhere to the general statement that

the key of the rate structure on imported materials has been the domestic rate from the near port. It has been the practice of the carriers in their competition one with another, and as between ports, to seek to avoid the undue concentration or flow of imported materials through particular ports by a considerable measure of so-called "port equalization," and is still the practice on the movement of imported fertilizer materials to points in the Southeast and Mississippi Valley Territory. I have prepared with care 2 exhibits in which the effort has been made to set forth sufficiently of the rates as will leave a fairly accurate general impression of the character and extent of such port equalization as has prevailed and does now prevail. I have prepared two exhibits—my Exhibits 444 and 445. In preparing these exhibits, I took Agent Speiden's Tariff I. C. C. 914, showing there the import rates published from the South Atlantic and Gulf Ports to destinations in the Southeast and Mississippi Valley. I have compared with those [fol. 748] import fertilizer rates the scale rates, first of the National Fertilizer Association's Traffic Committee, and second the scale rates used by the carriers in proposed scale I. C. C. Docket 16295. (Tes. 1094-1100.)

(The statements were thereupon received in evidence and marked "Protestants' Exhibits Nos. 443 to 446, inclusive, Witness Burke.")

It is regarded that the principle of port equalization is consistent with both the carriers' and public interest, if extended and limited by reasonable bounds. Without attempting to particularize in any measure, I think it true that perhaps there is considerable need of a more careful determination of the measure of port equalization than would seem to be in effect today. There should be readjustment of these import fertilizer rates along proper lines. So far as concerns the interests here represented in this proceeding, it is not intended to go further than having indicated that the key of the import rates might well be the domestic rate for the short-haul movement, and beyond that, to leave authorization to the carriers to indulge in that measure of reasonable port equalization which would seem in their judgment in the first instance to be necessary and wise. But in saying that, it is thought to be given to the

determination of something resembling a more consistent and something like possibly a general rule if it can be done; that is recommended. I have in mind that perhaps there might be determined a given distance up to which the mileage scale shall be established from all the ports, but it is very hard to definitely determine what that line is. It might possibly be 200 miles, or 250 miles from a given port. Suffice it to say, and differing with it only in principle, the thought is there might be a point up to which the scale shall be adhered to from all the ports. Then as the total lengths of haul increased, the margin of narrowing spreads [fol. 749] under what the scales would produce, shall become more accentuated.

I would say where the difference between two ports for distances from over 500 miles was not in excess of 50 miles, for that distance you could have a parity of rates from those two ports.

"Q. If you would say up to 100 or 150 miles, the scales might be exactly the same from all ports, would it mean then that similarly, between the 500-mile limit, and the 100, or 150, or the 200-mile limit——

"A. Within those extremes the principle——

"Q. (Continuing:) —should be applied by fading out the difference?

"A. Within those extremes it would be taken care of by the fading differential."

In any event the problem in its initial stages is regarded as mainly one of carrier competition which is in the public interest, insofar as it tends to keep the several ports open for these uninterrupted movements from foreign countries, it is true that that is subject to carrier competition, and it is a matter that the carriers themselves will have to work out and submit to the shippers for consideration, the rates to apply on these imported fertilizer materials.

"By Commissioner Eastman:

"Q. Let me hear about your Exhibit 444. You show there distances from the various ports to certain destinations, the present rates, what they would be under the National Fertilizer's proposed scale, and what they would be

under the carriers' proposed scale. Now, in determination of what they would be under these two proposed scales, did you simply take the rate, or the distance?

"A. From the near port. Now, take as an example, Mr. Eastman, Atlanta, Georgia. At present you will note that [fol. 750] the present import rate from Charleston, Savannah, Brunswick and Jacksonville is the same. Well, now, the key port there is Brunswick, Georgia, which is a distance of 275 miles. On the N. F. A. scale, the rate is $3.65, carriers' scale is $3.94. Now, that would set the import fertilizer material rate. The rate, from the other ports, according to our idea, should be equalized with that key port." (Tes. 1100-1104.)

I did not attempt on these exhibits to work out in such a manner port equalization, but merely to show what the rates would be for the extra distance. For that particular distance. On my proposed plan of equalizing of the ports, I regard the South Atlantic Ports as one group and the Gulf Ports as another group. Well, there is a point where there is an equalization betwen the two groups. When you reach a point like Nashville, Tennessee, distance from the South Atlantic ports is comparable with the distances from the Gulf Ports, and there ought to be parity of the rates from that point to both groups of ports, but when you get over into the territory in Georgia, the advantage is towards the South Atlantic Ports, the same as in Alabama the advantage is towards the Gulf Ports.

There was no intention to leave Norfolk out of this exhibit. We think that Norfolk is entitled to import fertilizer material rates into Southern Territory properly equalized. These ports that are used here were taken out of tariffs of the carriers, publishing special import fertilizer rates. We would include Norfolk and Wilmington in the ports which we equalize. That was intended to be the single line distance to Atlanta, the Southern line distance.

"Q. All the others, where they may be shorter, joint line or short line?

"A. They are shown on the last page in the chart, which [fol. 751] shows the different routes of those numbers."

If the Commission were to prescribe difference charges for single than for joint line hauls, it is to be understood that what is in mind is that the lowest rated port under the operation of the domestic rate level shall fix the key for the structure.

I heard the carriers' testimony in regard to port equalization, but I understood there was later to be testimony introduced showing just what that equalization was. So far as I understood what they had in mind, it is practically what I am proposing here.

This next exhibit of mine was prepared simply for convenience and consists of excerpts from previous decisions of the Commission dealing with the perplexing question of joint line differentials or arbitraries.

In the prescription of rate levels on the higher valued ranges of articles, such as would come under the operation of the class rates, when the rate level is relatively high, there is a greater opportunity to average differences in transportation costs and so averaging them to ignore those differences the fixation of a uniform rate level throughout a territory, and in disregard of comparatively minor differences in transportation conditions. When you go to the other extreme and get down into the range of commodities where the important view is that the lower plane of rates should be established, that opportunity to disregard exceptional conditions is as great; there is an opportunity there to disregard those exceptional conditions. With more particular regard, however, to the matter of joint hauls of low grade commodities on which the so-called low rates are and should be applied, it is found that the measure of such so-called low rates is hardly sufficient to warrant the division of such rates between connecting carriers, particu- [fol. 752] larly for the shorter length of haul, unless some additional charge be added. There is a necessity there, on a low grade commodity like fertilizer, or a joint haul. The principle would apply to any other low grade commodity. It arises more by necessity than any theoretical difference between the commodities. It is then the simple fact that the inevitable and necessary measure of the rates on the lower grades of commodities is and must be such as that in fairness to the connecting lines, it would be wise to impose a separate charge in recognition of joint hauls. If that

were not to be done, and if it were attempted to average the joint and single lines, and disregard difference between them, it would inevitably compel a higher rate level for that average than would be appropriate for that commodity; you have to have a higher rate level to take care of those joint haul movements, and sufficiently high to be very noticeably in contract with the two rate levels. It is understood that those principles are intended to support the theory of the assessment of a joint line charge higher than for single line; it is on those principles that we base our joint line scale in this case. Those same principles, however, tend to indicate that as the volume of the rate increases, with increasing lengths of haul, that practical necessity of making an arbitrary condition for joint hauls, at a certain distance, gradually fades out. As the volume of the rate ultimately reaches the point which it seems practicable to do so, the difference may be disregarded entirely. On acount of that, there is embraced within the proposal of the interests here a joint line fading system of so-called arbitraries; we have a system here, a fading differential for the joint line hauls. The measure of those several arbitraries has been carefully avoided in relation [fol. 753] to the progression of the single line scale, so as to avoid anomolies. In particular reference to the matter of short lines, it is not desired by these interests to emphasize any particular conclusions of their own respecting the treatment of such carriers.

Recent decisions of the Commission incline us to the view that the Commission has gravitated towards some preconceived conclusions respecting the treatment of those carriers.

So far as concerns these interests, it is not the conclusion that as applied to that description of carriers, there are no peculiar circumstances surrounding the fertilizer, as distinguished from other commodities, and that whatever may be the trend of thought in the Commission as to its treatment of those carriers, those conclusions of the Commission are as applicable to the fertilizer as any other commodity; they would be applicable to fertilizer movement like they are applicable to other movements on those lines. It is our thought as to the entire field of inquiry, the interests

we are here representing are entirely content to abide the trend of thought in the Commission as a consequence of its more general study of that problem. (Tes. 1106-1110.)

Cross-examination:

"Mr. McGehee: That means, does it not, Mr. Cotterill, that as a matter of fact that so far as these short lines are concerned, that you are not opposed to a rather generous treatment of those lines; that is what you mean?

"Mr. Cotterill: That is the import of it, of course."

The shippers believe that these port charges, prior to January 10, 1921, were the nominal charges, and that the present port charges are too high for such services. These port terminal charges should be considered as having a [fol. 754] bearing on the reasonable measure of fertilizer rates for the movement of imported fertilizer—not to the domestic movement.

"Q. Now, on whose authority did you rely for the statement that prior to 1921 the port terminal charges were merely nominal?

"A. I submitted the figures there; they appear to be nominal charges; they were in effect from 1901 to 1921, a period of 20 years."

I prepared that exhibit. It is true that it would appear from the caption of this exhibit reading as follows: "Charges shown below are not applicable at New Orleans"—that would imply that these figures shown on this table purport to represent the charges that were applicable at other South Atlantic and Gulf Ports; they are the charges that are applicable at the South Atlantic Ports, and at the Gulf Ports east of New Orleans. You know that there is a difference in the charges at New Orleans. I have shown those charges on the next page. Under the tariffs I have used in compiling this exhibit, in so far as the South Atlantic Ports and the Gulf Ports east of New Orleans are concerned, there is an apparent uniformity.

It is true that the very first item shown on my exhibit, column No. 1, which purports to show rates effective in 1901, carries with it a notation "not filed with the Inter-

state Commerce Commission." That exhibit was introduced by Mr. Glover in Docket 12681, and I had that checked up, and found that there were old tariffs in effect at that time that were not filed with the Commission. Mr. Glover was a witness for the Atlantic Coast Line Railroad in that case. Under Columns 2, 3 and 4 I cite individual tariffs of the Atlantic Coast Line Railroad, and you ask: Does it necessarily follow that those same terminal charges that were carried by the Atlantic Coast Line and may have been published by other carriers at other ports: I show [fol. 755] those tariffs of the Atlantic Coast Line because my file was complete on it, and I did not take the tariffs of the Southern Railway and Central of Georgia, which I have in my offices, and chek them against those, and found there were very few differences, very slight differences, practically the same. You take the tariff of the Southern Railway and the tariff of the Atlantic Coast Line, and they are the same. In saying that prior to 1921 I considered the charges nominal, I had particular references to wharfage and handling charges; there has been modification in the storage charges since then. Just prior to 1921 there were enormous accumulations of imported fertilizer materials which were left for long periods of time in the railroad warehouses, owing to the situation with which the fertilizer industry found itself confronted at that time. The charges on those—for that storage, were pretty low. It shows there was a charge of 10 cents a ton per month of 30 days. (Tes. 1110-1114.)

As to what extent I think that the fact that port terminal charges may have been small, or may not have been collected at all during the period that I am talking about, simply grew out of the disruption of such charges by the different carriers for competitive reasons, and in an effort to equalize the different ports: There was prior to that publication in January 10, 1921, such practices at the South Atlantic and at the Gulf Ports, the carriers would absorb the entire storage charge for a year. So that as a matter of fact, growing out of this competitive situation, and these absorption practices, there was great variation in the actual charges that were made at different ports. I will say with regard to storage that frequently no charges were made at

all. I do not think it is true in regard to wharfage and [fol. 756] handling, I think the carriers attempted to collect those charges.

The effort was made in the general investigation by the carriers to provide uniform charges at the South Atlantic and Gulf ports. Now, as to the measure of those charges, there was a large difference of opinion. Some of the shipping interests—I mean the shippers' interests, held that the charges were too high, and attempted prior to that hearing to have those tariffs suspended, but they were not successful in that. I don't understand that the charges proposed by the carriers, and submitted by them at the hearing, were based upon the actual cost of performing the port terminal service, and fixed on what the carriers believed to be no more than a reasonable charge for the actual port terminal services, without any reference whatever to any line haul transaction. It is my recollection, at that hearing, that charges that were introduced by the carriers, were an average, rather than an actual charge; an average of the charges, based upon the average of costs at the different terminals, I heard the testimony. In General Order 28, the carriers did receive an increase on the port terminal charges, but they did not receive any increase in port terminal charges in Ex Parte 74.

"Q. On the contrary, although in the general investigation, the Examiner of the Commission tentatively at least approved the scale of terminal charges proposed by the carriers on fertilizer and fertilizer materials, and were the only exceptions on which a lower level of charges was authorized or approved?

"A. There is one other exception, that was kerosene oil.

"Q. One other exception, kerosene oil?

"A. And fertilizer and fertilizer material, were the exceptions from the charges."

[fol. 757] Since that time of that hearing, and that tentative report, the carriers have voluntarily further reduced the handling charge on fertilizer 30 cents; that was the carriers' reduction of that charge on handling from 50 cents to 30 cents. I am not familiar with the feature as to whether that reduction was made after the carriers had been confronted with threats from the fertilizer manufacturers that

unless the carriers' terminal charges were reduced, the fertilizer people would provide their own storage and handling at the ports.

The trend of thought in the South today is that either the State or the municipality should own its terminals at the various ports. I don't know of any place where the municipalities have leased any terminals from the carriers, and bought them outright. Wherever there has been leasing of terminals, such as Wilmington or Jacksonville, it has been by private individuals rather than the municipalities. Speaking of Charleston, I don't think we have urged the carriers to abandon any terminals, because before we went into the terminal business the carriers had already abandoned the terminals at Charleston. When the carriers voluntarily reduced the handling charge on fertilizer material, that was opposed by the public authorities, or municipal terminals; very actively opposed. (Tes. 1114-1118.)

I couldn't say that, in the general port charges investigation, I. C. C. Docket 12481 (12681), all the operators of private terminals at the South Atlantic ports, including Norfolk, took the position that the charges which the carriers were proposing were too low, and should be advanced; I think that the opposition to the carriers' charges came from the American Warehousemen's Association rather than from private individuals, and it was their view that [fol. 758] the charges proposed by the carriers were too low, that they ought to be higher.

"Q. Well, the operators, or the private facilities at the ports did take the position which I have previously stated, did they not?

"A. Not at all the ports. There was opposition at Norfolk and at Mobile, outside of that I don't know of any other private operators that took that position."

On my exhibit No. 443, item 10, I show the reduction there in the handling charge of from 50 to 30 cents per ton; I did not understand that the city of Norfolk, operating the Army Supply Base at that point, protested against that reduction on the ground that the actual labor cost of handling between shipside and storage, or between storage and car, was below actual cost of handling the properties. They appeared in that case and introduced testimony; they opposed that reduction.

My point is that these terminals were largely operated by the carriers, and that such charges as they made are not of great importance, and for the most part they were dependent upon the line haul rates to cover not only the cost of the line-haul carriage, but also the terminal services as well. Later, especially after the terminals went into the hands of the municipalities or private interests, the terminal charges were established on higher levels. I am not endeavoring to prove that those charges are too high or too low, but simply that they are higher than the charge before, and that they were established on higher basis without any change in the line haul rate.

It is my understanding that the carriers would absorb the charge in order to get the business. It was a fight for the business, it was competitive conditions, and it made the import rate to the consumer or the man in the interior cheaper than they are under the present tariff.

[fol. 759] Whatever compensation it was to the carrier for the combined port services and the line haul movement, was received out of the line haul rates. And, when later that policy was changed by reason of cost computations, the effort was made to establish a separate line of compensatory port charges, there was no equivalent readjustment of line haul rates, and that is the essence of what I am attempting to establish here. That is the point I am trying to make, and that there should be a readjustment of the line haul rates from the ports along proper lines. We want that element of the added port charges taken in, when we readjust the import fertilizer rates. It is a fact that the advance in the port terminal charges and the publication of the uniform charges in Glenn's Tariff, which became the subject of this proceeding, were made prior to the time when these terminals were leased to public authorities. I think that the wharfage, terminal and other accessorial charges at the ports should be considered, and separated from the line haul; I think it should be separate and distinct from the line haul charge. In the operation of railroad terminals, it goes back to the old condition that it allows for the continuation of those absorptions, which we want to do away with.

"Q. Now, in the port equalization scheme awhile ago, you thought that 250 miles and under, that the mileage basis should apply to the various ports?

"A. No, Mr. Cobb, I think you misunderstood me. I did not say any distance; it might be 150 miles, or 200 miles, or 250 miles. It is pretty hard to determine that; that would take a careful check of the rates and distances to arrive at that area within which you would apply your mileage scale."

[fol. 760] I have not arrived at any line where you can draw the distinction between the mileage scale and the equalization basis. Our point in this case is that from the key port, or nearest port, the domestic rate will be applied, and from the other ports the rates will be equalized with that key port. (Tes. 1119-1122.)

[fol. 761] W. P. Sturtevant was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination.

"By Mr. Quirk:

"Q. I represent the American Cyanamid Company. We have two witnesses. In our testimony we will undertake to show that cyanamid is a very important fertilizer material. That it is manufactured at Niagara Falls, the only place in fact that it is manufactured in North America. That its chief competition is in the Southeastern Territory, or rather that its chief source of consumption, and chief markets in the Southeastern Territory are involved in this proceeding. That it competes actively with European cyanamid, and that its haul in almost every instance is a long haul, and that the circumstances and conditions surrounding the manufacture, sale and transportation of cyanamid put it in a class by itself. It is of peculiar characteristics that do not apply to any other fertilizer material.

"I will have Mr. Sturtevant as our first witness; he has already been sworn."

My name and address: W. P. Sturtevant, 20 East 35th street, New York City. I am employed by the American Cyanamid Company, as Assistant to the Vice President.

I have charge of handling the customs and duties matters and the freight rate matters as they affect all the products of the company. I am familiar with the issues involved in this proceeding. The American Cyanamid Company is a corporation. It was incorporated in the State of Maine in 1907. Over 91 per cent of its capital stock is owned by citizens of the United States. Its cyanamid plant is located [fol. 762] at Niagara Falls, Ontario. Cyanamid is what is called in the fertilizer trade an ammoniate. Every complete fertilizer is composed of three ingredients; potash, acid phosphate and ammonia. Cyanamid which contains about 26 per cent ammonia, furnishes part of the ammonia content of the fertilizer manufacturer's complete product. Cyanamid is a grayish powder and is made by pulverizing, hydrating and oiling lime nitrogen. It is sold on the basis of its ammonia content. It has no use other than as a fertilizer material. The American Cyanamid Company located its cyanamid plant at Niagara Falls, Ontario, to obtain the advantage of very cheap hydroelectric power.

Our company produced during the year ending March 31, 1925, about 65,000 tons of cyanamid. During the preceding 12 months about 55,000 tons. Our production has been steadily increasing. All of our total production of cyanamid is used as a fertilizer material.

Last year's production was shipped: About 36,000 tons to S. E. Territory; 24,000 tons to Trunk Line Territory; 2,600 tons to C. F. A. Territory and the rest to S. W. Territory, Western Territory and Canada.

The cyanamid process was discovered about 25 years ago by two German chemists by the names of Frank and Caro in Berlin. The world rights to this process were placed in the hands of an Italian corporation with headquarters at Rome, Italy. In 1906 the American Cyanamid Company secured from this Italian corporation the rights to the cyanamid process for North America. In 1908 the Cyanamid company started building its plant at Niagara Falls, and produced its first material in 1910. At that time this material had never been produced in North America. The cyanamid company spent several years and large amounts of money introducing the use of cyanamid into the fertilizer industry in the United States. It was necessary to employ [fol. 763] highly trained technical men, and a large staff of

service men to demonstrate the use of this material. For a long time there was a strong antipathy on the part of the fertilizer mixers toward this material. In the early days the product was not nearly so suitable mechanically for use in fertilizer plants as it is today, and a great deal of labor trouble was caused by its high lime content. The first year in which the cyanamid company sold any large amount of this material was 1916, in which year 41,000 tons were sold. During 1917 and 1918, the United States Government commanded the cyanamid company to use all its plant facilities in the interest of the Government and not a pound of cyanamid was sold during those two years.

Cyanamid contains peculiar properties which make it valuable as a fertilizer material. It has a high content of ammonia which is a very valuable fertilizer ingredient. In addition, cyanamid is a fine conditioner of fertilizer mixtures as its use makes the fertilizer dry, friable and easy to handle and to apply to the soil. This latter property of cyanamid is very important, as in many cases the base used by the fertilizer manufacturer is very wet and soggy. The nitrogen in cyanamid is changed in the soil into organic forms such as urea, which nourish the plant for longer periods than some other ammoniates.

The tonnage of cyanamid produced does not reflect its real importance to the fertilizer industry, for the reason that only about 60 pounds of cyanamid can be used, under normal conditions, in a ton of complete fertilizer. The reason for this is the high lime content of cyanamid. Thus, it will readily be seen that the 65,000 tons of cyanamid used in fertilizer mixtures during the past year were used in the production of a total amount of over two and a half million tons of fertilizer.

Cyanamid is not produced by any other company in North America. Cyanamid is sold directly to the fertilizer manu- [fol. 764] facturer. In recent years there has been a diversion of natural organic ammonia from the field of fertilizers to other uses. Formerly tankage and dried blood were largely used in the manufacture of fertilizers on account of their high ammonia content. However, these materials are now more valuable for stock and poultry foods and therefore have disappeared to a large extent from the fertilizer field. Our cyanamid competes with nitrate of soda,

sulphate of ammonia and cyanamid produced in Europe. As to which of these products I regard as our chief and most active competitor: Sometimes one product and sometimes another. The fertilizer manufacturer ordinarily uses sulphate of ammonia and nitrate of soda as well as cyanamid, because it is not possible to substitute one of these products entirely for the others. To a certain extent such substitution can be made, however, so the price we can obtain for our cyanamid is governed largely by the price of these other materials. If one of them is unusually low in price, that is apt to be our principal competitor. Our cyanamid, to have the largest market, must be priced lower than sulphate of ammonia or nitrate of soda. On the other hand, the only material which, if used by the fertilizer manufacturer, necessarily replaces and excludes our cyanamid is European cyanamid. Every pound of this last mentioned material used in America means the loss of one pound of business for us. (Tes. 1123-28.)

The Federal and State Governments have taken a special interest in the development and use of cyanamid as a fertilizer material. It is recognized as a standard fertilizer material by the U. S. Department of Agriculture and by the Departments of Agriculture of many States. Such bodies have conducted many tests with cyanamid. The Fixed Nitrogen Research Laboratory of the United States Government has published several documents concerning the value of cyanamid. The use of cyanamid tends to simplify [fol. 765] the manufacture and decrease the cost of fertilizer. Cyanamid is the cheapest form of organic ammonia which the fertilizer manufacturer uses today. We have prepared an exhibit which shows the average price per unit of ammonia of nitrate of soda, sulphate of ammonia, and cyanamid for the years 1910 to 1924 and six months of 1925. This table shows that the f. o. b. price of cyanamid from Niagara Falls has been uniformly lower than the f. o. b. prices of the other ammoniates. In my judgment, the use of cyanamid has enabled the fertilizer manufacturer to reduce his selling price to the farmer. It should also be borne in mind that cyanamid is a fine conditioner of fertilizer, and its use enables the manufacturer to cure his fertilizer in two to three days.

I know of advantages enjoyed by the European producer of cyanamid not enjoyed by the American Cyanamid Company: Several European governments built large cyanamid plants during the war to supply nitrogen for explosives. After the war these plants were subsidized by these governments in the matter of power, and other things. This fact, coupled with the low labor rates in Europe and the depreciation of the currency of most of those countries, bring the cost of producing this European cyanamid to a very low figure. In addition to this, the ocean freight rate from Europe to our South Atlantic Ports is from $3.00 to $3.50 per ton, which is less than the railroad freight rate on our material from our factory to Virginia City Gateways and the Ohio River Gateways. We must not only pay the rail rate to these gateways, but must also pay the rail rate from these gateways to the fertilizer manufacturing plants in the Southeast. Take Savannah for an example; the European producer can deliver his cyanamid at Savannah at an ocean freight cost of about $3.50, while our rail freight cost to Savannah is $8.89.

[fol. 766] We will offer Exhibit No. 447.

(The statement was thereupon received in evidence and marked "Protestants' Exhibit No. 447, Witness Sturtevant.")

As to why, in the face of the advantages enjoyed by the European manufacturer of cyanamid, it is that we have been able to compete in the Southeast: We have adopted every possible means of reducing our costs and have spent, within the last two years, nearly one and a half million dollars at our Niagara Falls plant to reduce production costs. During this same period we have cut our selling price about 25 per cent, but a substantial part of this cut in price has come, not out of savings in cost, but out of reductions in our margin of profit on that part of our business which consists in the production and sale of cyanamid fertilizer material. During the last five years we have cut our selling price for this material over 50 per cent, and its price today is 40 per cent below the price of nitrate of soda and 24 per cent below the price of sulphate of ammonia.

It is important that the American fertilizer industry have the source of supply of cyanamid maintained by our company. It would be very unfortunate if the American fertilizer manufacturer were forced to depend entirely upon the European producers for his supply of cyanamid. These European cyanamid plants are operated by hydroelectric power which fluctuates greatly with the amount of rainfall and snowfall. The American Cyanamid Company has an absolutely dependable power supply from Niagara Falls which does not fluctuate, and it has always been able to supply all the cyanamid required by American fertilizer manufacturers. Its ability to continue to do so will be promoted by its securing reasonable freight rates.

I heard the testimony yesterday about the effect on a car of the odor from a certain number of fertilizer materials. The odor of cyanamid is not a contaminated odor. If you have cyanamid and put it in a small bottle, with a [fol. 767] neck an inch across, and cork it for some time, there is a slight odor, due principally to the petroleum that is used to oil cyanimid. Cyanimid, unless it is oiled slightly, is a very dusty material, and to reduce this dustiness, we hydrate it slightly, and oil it with about 5 per cent of petroleum, and this oil does give out a slight odor. (Tes. 1128.32.)

Cyanimid is shipped in 200 pound burlap bags, and if you had loose a bag of cyanimid on the table here, nobody would notice the odor from it.

The population of Niagara Falls, Ontario, is about 20,000. The American Cyanimid plant is located in the northern part of the city, right on the city line. It is a fairly populous district. There has never been any complaint lodged against the company because of odors by the people of Niagara Falls, nor by the Government.

The American Cyanimid Company has never made a claim against the railroads for damage to its commodity, or for losses other than the actual loss of the sack. The railroads to my knowledge have never made a complaint against the American Cyanimid Company that the cars used in the transportation of Cyanimid had any bad effect on the car.

My purpose was simply to make a general statement for our company and our factory, and our material, which Mr. Sweidler, who will go into the rate situation. (Tes. 1128-1133.)

(Witness excused.)

OSCAR SWEIDLER was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is Oscar Sweidler; I reside in Jamaica, Long Island, and I am in charge of the American Cyanimid Company Freight Traffic Bureau. I have been employed by the American Cyanimid Company for about six years. I am [fol. 768] located in New York. In my experience in the traffic work, I have had occasion to deal with the rate matters. I am familiar with the issues in this case. I have studied the case from the standpoint of these issues, and have prepared exhibits with respect to the interest of the American Cyanimid Company. I am familiar with the testimony that has been introduced thus far. The movement of cyanimid from Niagara Falls is a fairly constant movement. I want at this time to submit some exhibits.

(The statements were thereupon received in evidence and marked "Protestants' Exhibits Nos. 448 to 460, inclusive, Witness Sweidler.")

"Mr. Quirk: No; I will undertake to explain our position.

"Mr. McGehee: I think it will help us.

"Mr. Quirk: The American Cyanimid Company, as our record will show, has now proportional rates from Niagara Falls to Ohio River Gateways and Virginia City Gateways, which are lower than the prevailing rates on fertilizer materials. They also have through rates to Gulf Ports. The issues in this case embrace the rates on fertilizer and fertilizer material within the Southeastern Territory. What the American Cyanimid Company seeks in this case, and we hope the railroads will look upon the thing as something to their own interest as well as to ours, is a proportional

rate from the gateways to the consuming points in the Southeast.

"Were it not for some of the jurisdictional questions, this company might object or complain, and seek joint rates from Niagara Falls to these points in the Southeast, and as our case develops, you will see that it has its own peculiar characteristics, and that what it ought to have is some rates on these gateways that will constitute for that purpose through rates, and at the hearing in Atlanta Commissioner Eastman asked Mr. Drescher while on the stand, [fol. 769] how the railroads would look upon a proposition of establishing proportional rates, and Mr. Drescher said they would be glad to consider it, that it perhaps seemed to them, that perhaps that was the thing to do. Now, I assume at sometime before the hearing is finished or concluded, the railroads will have something to say about it, but that is our position, and we think that question is directly in issue under the order." (Tes. 1133-36.)

This exhibit, 448, shows that in the period mentioned we ship at a fairly constant rate during the entire year; that is, from April 1st, 1924, to March 31st, 1925, we shipped a total of 62,431 tons of cyanimid. The statement also shows that during the period mentioned we shipped at a fairly constant rate during the entire year; the average was over 5,000 tons per month.

The figures for the period covering this exhibit are typical of previous years; they are typical figures as to the movement. I have prepared an exhibit which shows how cyanimid produced by the American Cyanimid Company has been distributed throughout the country.

I submit Exhibit 449, showing the distribution of cyanimid for the period between April 1, 1924, and March 31, 1925, showing that 35,376 tons were shipped into the Southeast; 24,427 tons were shipped into Trunk Line Territory, and 2,628 tons were shipped into C. F. A. Territory. This exhibit shows that more than 56 per cent of our cyanimid tonnage went to States in the Southeast.

The carriers have testified that the movement of fertilizer in the Southeast is seasonal, which tends to increase the cost of transportation. There is nothing seasonal about

the movement of cyanimid produced by the American Cyanimid Company. As shown by my Exhibit 448, the movement of our cyanimid is constant throughout the year. This constancy in the movement of cyanimid tends to give the carriers loadings for cars to the fertilizer mixing plants [fol. 770] that might not otherwise exist. I should say that during the time that fertilizer is being shipped heavily from Southern fertilizer factories, the movement of cyanimid as a raw material provides the carriers with an empty car supply, which they would otherwise have to supply. If there is anything in the statement made by the respondents that the seasonal movement of fertilizer from mixing plants in the South increases the cost of handling, then we submit that the circumstances surrounding the movement of cyanimid, a raw material, into these plants, indicates that this element of cost is absent in respect to the movement of cyanimid.

There is no reason why there should be the same rates on fertilizer as on cyanimid. Fertilizer in the Southeast has been shown to move for distances of 100 miles or less. Cyanimid moves greater distances. It is a raw material used in the manufacture of fertilizer, and the method of manufacturing such fertilizer by the use of cyanimid is, in my opinion, similar to the practice of manufacturing in transit, under which many raw materials are given freight rates much lower than rates on the finished products.

It is generally well recognized by both the Commission and the railroads that the rates on raw material should be lower than on the finished products.

There are rates on fertilizer materials in North Carolina that are 10 per cent lower than fertilizer rates. There are rates from the Virginia Cities and from North Carolina to Southeast inland points and to South Atlantic Ports that are lower than the fertilizer rates. There are rates on fertilizer materials in the States of Georgia and Florida that are lower than the fertilizer rates. There are scattering fertilizer material rates throughout the South lower than the fertilizer rates. In Trunk Line Territory there are some fertilizer material rates that are lower than the fer- [fol. 771] tilizer rates. This is so as to cyanimid in Trunk Line Territory.

As to how the average loading of cyanimid compares with the average loading of fertilizer: It loads heavier—to show this I submit Exhibit 450, showing the tonnage of cyanimid shipped into the Southeastern States for the period April 1, 1924, to March 31, 1925; also showing the number of cars shipped, and the average weight per car. In North Carolina we shipped on the average 27.33 tons of cyanimid per car. The lowest average loading for any State is that for Alabama, which was 24.93 tons per car. The average for the entire Southeast is 25.88 tons per car. Statements were made during the hearing in Atlanta that the average loading for fertilizer in the Southeast was about 21 tons per car. However, this average figure of 21 tons per car includes the fertilizer material tonnage. In several States fertilizer material moves at higher carload minimum than fertilizer. This tends to exaggerate the carrier's average figure of 21 tons for average loading of fertilizer. (Tes. 1136-1140.)

The car would not have to be cleaned in ordinary merchandise movement, if it had contained cyanimid. Cyanimid is non-odorous, shipped in burlap bags, and its chemical action is entirely neutral. It would not affect the car nor general merchandise loaded in a car that contained cyanimid. Ordinarily, I should say that cyanimid cars would not have to be cleaned.

I have prepared a statement that shows the volume of this European cyanimid importation. I submit Exhibit 451 showing the importation of European Cyanimid from the period June 1, 1924, to March 31, 1925. It will be noted that this cyanimid was shipped to the United States from seven different European countries. The total tonnage shipped to the United States during this period was 17,734 tons of cyanimid. By comparison with Exhibit 449 it [fol. 772] will be noted that European cyanimid sales in the Southeast were 50 per cent of our sales in the Southeast, and adding the two figures, i. e., the total figure for the American Cyanimid Company's shipments and the total figure for the European shipments, it will be noted that the tonnage they have been able to sell in the Southeast represents a curtailment of our sales in the Southeast by a substantial tonnage.

The cyanimid which we ship to the Southeast moves from Niagara Falls, Ontario, on proportional rates to the Vir-

ginia Cities or Ohio River Gateways. To these proportional rates are added the local rates from the gateways to the Southeastern destinations.

The proportional rate on cyanimid from Niagara Falls, Ontario, to the Virginia Gateways is $5.40 per ton.

European Cyanimid has been shipped to the Southern ports at a rate of about $3.50 per ton. The usual charge for delivery from steamers to the large plants located in the South Atlantic Ports is only 70 cents per ton.

The total cost of laying down European cyanimid at any of these large port factories is only about $4.20 per ton.

Several of the large European cyanimid plants are located at seaports, such as at Odda in Norway, and Sebenico in Dalmatia. There is no interior freight to pay to get this European cyanimid on board vessels. The European cyanimid manufacturer has a freight difference in his favor of $1.20 per ton as compared with our freight cost to reach only the gateways to the Southeast.

The high local rates from the gateways to the Southeast is added on top of his already large freight advantage.

We wish to point out that many of the large fertilizer plants in the Southeast are located in the South Atlantic Ports, such as Wilmington, Charleston, Savannah and Jacksonville.

[fol. 773] We can't ship cheaper by ship to the North Atlantic Ports, by water; since the War the steamer lines have raised their rates to such an extent that combinations are out of the question, besides, we have to pack our material especially for water transportation at an extra cost, and that is taken into consideration in the figure of water costs, and water transportation.

These port factories use about 50 per cent of the entire Southeastern cyanimid tonnage. The European cyanimid producer does not have to be concerned to a large extent with interior American freight rates. On most of his sales the United States railways do not receive any haul whatever.

Cyanimid shipped by us sustains a complete rail haul from Niagara Falls, Ontario. The United States carriers secure revenue from every ton of American cyanimid shipped into the Southeast by this Company. It has been testified by the Southern carriers in this proceeding that the average freight haul on fertilizer material in the

Southeast is about 100 miles. This is based upon actual movement of these materials from a typical port, Wilmington, North Carolina, and is fully shown on Mr. Menzies' Exhibit No. 11.

At best, the European cyanimid movement to interior Southeast would not exceed an average of about 100 miles, and the freight rate for this distance would be an exceedingly small item when compared with the rates and distances which cyanimid produced at Niagara Falls, Ontario, sustain, such as rail hauls from 700 to 1,200 miles and rates averaging $10.00 per ton.

As shown by Mr. Sturtevant, other ammoniates may be used with our cyanimid, but every ton of foreign cyanimid used by fertilizer manufacturers located in the Southeast means one ton less of our cyanimid that we can sell. The [fol. 774] characteristics of our cyanimid and the circumstances and conditions surrounding its movement into the Southeast are peculiar to it, and, in our judgment, warrant the establishment of proportional rates lower than the existing rates on cyanimid from the Ohio River and Virginia City gateways to points in the Southeast.

I have prepared a statement showing the rates on cyanimid from Niagara Falls, Ontario, to the Ohio River Crossings and the Virginia City gateways, and to various Northeastern points.

I submit Exhibit 452, showing rates on cyanimid from Niagara Falls, Ontario, to Boston; Philadelphia, Carteret, New Jersey; Baltimore and Norfolk.

In this statement we show the 6th class rate, which is the classification basis for cyanimid, in Official Classification Territory, and which also moves most of the fertilizer in Official Classification Territory.

However, comparisons between these 6th class rates and the cyanimid rates show that, with the exception of Norfolk, the cyanimid rates are slightly over 70 per cent of the 6th class rates which ordinarily move fertilizer in the North.

I say 6th class rates ordinarily move fertilizer; I am referring to complete fertilizer and not materials; not the materials in Trunk Lines. Well, the materials in C. F. A. Territory move under 6th class rate, but in Trunk Line Territory there are some materials—some points of origin,

some destinations where no material rates exist, there are also some that have material rates.

As a rule, 6th class rates in C. F. A. is a lower basis than Trunk Line.

Well, New York here is represented by the actual fertilizer manufacturing point, Carteret, New Jersey.

"Q. I mean, have you got rates from Niagara Falls to Carteret, New Jersey?

[fol. 775] "A. Carteret is representative as New York, you can use Carteret as New York figures, if you want to."

However, comparison between these 6th class rates and the cyanimid rates shows that, with the exception of Norfolk, the cyanimid rates are slightly over 70 per cent of the 6th class rates which ordinarily move fertilizer in the North. They also show the proportional rate on cyanimid from Niagara Falls to Norfolk, which, it will be noted, is 62.7 per cent of the 6th class rate.

Comparison of these rates with the Royster Scale rates for the distances involved shows that in many cases the Royster Scale is higher. The carriers have made the statement that fertilizer material rates in the South were generally lower than fertilizer rates in the North. I wish to call attention to Mr. Menzies' Exhibit No. 20, in which he compares the fertilizer rates in the Trunk Lines Territory with the Royster Scale rates. (Tes. 1142-46.)

"By Com. Eastman:

"Q. Haven't you made a mistake in that exhibit, in the heading, 'Percentage of commodity rate to proportional rate'? Should not that be 'Percentage of proportional rate to commodity rate'? Just as in the next one?

"A. In the case of which? No, that is commodity rates of the 6th class rates.

"Q. No, the next one, percentage of commodity rates to the proportional rates—83.7 per cent. Should not that read just as the next column does, 'Percentage of proportional rates to commodity rates'?

"A. O, yes, that is just turned around there. I just want to show there that even our proportional rate is 83 per cent of our general cyanimid rate level in Trunk Line Territory."

Between many shipping points in Trunk Line Territory, and many destinations, there are special rates on fertilizer [fol. 776] materials. There are a great many commodity rates on fertilizer.

I have prepared an exhibit which is in the nature of a summary of the rates shown by Witness Menzies in his Exhibits 20, 21, 22 and 23; and I now submit Exhibit 453, of two pages. It will be noted that the Royster Scale rates are 80 per cent of the Northern fertilizer rates. In some instances they are 75 per cent. But the average, based on all these exhibits, which are quite comprehensive of the rates on fertilizer in Trunk Line Territory, shows that the ratio between fertilizer rates in Trunk Line Territory and the Royster Scale is 80 per cent. In other words, the Royster Scale is 80 per cent of trunk line rates.

"By Mr. Quirk:

"Q. You mean 6th class rates?

"A. Well, not 6th class of the general level of fertilizer rates in Trunk Line Territory."

I have prepared an exhibit in which the rates on cyanimid from Niagara Falls are compared with the 6th class rates in Trunk Line Territory for the purpose of showing the ratio of cyanimid rates to the 6th class; and I submit Exhibit 454. That exhibit shows that the cyanimid rates from Niagara Falls to Trunk Line Territory are 75.5 per cent of the 6th class rate.

This may be compared with Witness Menzies' exhibits, which show that the ratio of the Royster scale to Trunk line fertilizer rates is about 80 per cent.

The carriers have stated that the fertilizer rates in the Southeast are substantially lower than the fertilizer rates in Trunk Line Territory. The traffic density in Trunk Line Territory as to all commodities is greater than the traffic density in the Southeast. However, if we confine ourselves to fertilizer and fertilizer materials, the traffic density in respect to those commodities is greater in the Southeast than it is in Trunk Line Territory. It is shown [fol. 777] that the movement of cyanimid in the Trunk Line Territory is substantially the same as the movement of our cyanimid into Southeastern Territory.

In Trunk Line Territory fertilizer traffic generally moves at the 6th class rate. In the Southeast, the classification rate for fertilizer is the "fertilizer rate, of 6th class in the absence of fertilizer rates." In the Southeast commodity rates are considered as a classification basis for fertilizer. In Trunk Line Territory our cyanimid moves at 69½ per cent of the fertilizer rates.

In our Exhibit No. 452 we show a proportional rate on cyanamid to Virginia City Gateways represented by Norfolk, 62.7 per cent of the 6th class rate. This is a proportional rate established to enable our cyanamid to move from Niagara Falls into the Southeast. These proportional rates were voluntarily established by the Trunk Line carriers as they recognized the necessity for such rates. All the reasons which have induced the trunk lines to establish proportional rates on cyanamid are present in the Southeast. There is no reason that we know of why the basis that now prevails in Trunk Line Territory should not be established in the Southeast.

I have prepared an exhibit which will reflect the effect of the Royster Scale on the movement of cyanamid to the Southeast. I submit Exhibit 455. This is a six page exhibit showing the revenue produced under the present rates, the Royster Scale, and the Alabama Scale for the cyanamid tonnage moving into the Southeast between April 1, 1924, and March 31, 1925. These exhibits are self-explanatory.

In North Carolina, under the Royster Scale, our weighted average freight rate will be increased from 8.49 to 8.74, a ton; whereas, under the Alabama Scale there will be a very slight reduction.

[fol. 778] In Tennessee the average rate will be increased under both the Royster and Alabama Scales.

In Mississippi the tonnage is very slight and the effect of the rate change will be inconsequential.

In Florida under the Royster Scale the present rate would be increased 9.50 to 10.58 a ton, and the Alabama Scale average rate would be $10.00 per ton.

In South Carolina our present average rate is 9.98. The Royster Scale would produce an average rate of 10.04; and the Alabama Scale would produce a rate of 9.52.

In connection with this exhibit, the rates given and commented upon are from Niagara Falls, Ontario, and where

rates to certain States are named, they are rates from Niagara Falls, Ontario, on cyanamid to those States as named.

In Alabama there is an increase from the present average rate of $9.36 per ton to $10.96 per ton on the Royster scale, and $10.21 on the Alabama Scale.

In the State of Georgia, where we ship 11,099 tons, the average present rate is $9.74 per ton. Under the Royster Scale this rate would be increased by $1.05 per ton to $10.79 per ton; and under the Alabama Scale, the average rate would be $10.06 per ton. (Tes. 1146-1150.)

[fol. 779] The purpose of exhibits 454 and 455 is to show that neither the Royster Scale, nor the Alabama scale are adaptable to the movement of cyanamid. It shows that the average rate on cyanamid under either of these scales would be increased. We have already demonstrated that the rates on cyanamid cannot stand an increase and ought to be reduced.

It is true that the Royster and Alabama Scales would bring about reductions on cyanamid to some points in the Southeast. We call attention to the fact that to the largest points in the South our rates are increased under both of these scales in almost every instance.

Broadly stated, this exhibit supports our general position that cyanamid has peculiar characteristics and special circumstances surrounding its movement and competition, which make it necessary that it have rates which are fair and reasonable as applied to that commodity. I have an exhibit to show what would be the scale then prescribed for the average rate on cyanamid. That is 456.

I now submit Exhibit 456, summarizing Exhibit No. 455. The weighted average rates for all of the Southeastern States under the present rates is $9.92 a ton; under the Royster Scale $10.13 a ton; under the Alabama Scale $9.52 per ton.

That is all the way from Niagara Falls.

"Q. You are just taking the distance from Niagara Falls; do you know what the rate would be under the Royster Scale?

"A. Well, not the distance, the combination rate. The rate, through the gateways, and local rate from the gateways.

"Q. Based on the Royster scale?

"A. Based on the present rate, the Royster scale and the Alabama Scale."

This bears out our contention that as a general average under either the Alabama or Royster scales our cyanamid [fol. 780] rates would be increased. Should the Royster Scale be adopted, it will entirely nullify, insofar as cyanamid is concerned, the 10 per cent reduction required by the Interstate Commerce Commission in 1922. In other words, our increase under the Royster Scale would mean about 10 per cent. As to whether these rates from the gateways at present are special commodity rates applying on cynamid only: I will explain that this way. In North Carolina to some fertilizer plants there are special rates for carload minima of 50,000 pounds. That does not apply all over the State of North Carolina, but only to some fertilizer factories. Now, generally in the Southeast, cyanamid moves on fertilizer rates. The rates from the Ohio River Gateways, for example, are merely the present local fertilizer rates. The same thing from the Virginia Cities, the present local fertilizer rates.

I have prepared an exhibit which shows the effect of the Royster Scale on the charges applicable to cyanamid moving from Niagara Falls to Southeastern points during the period from April 1, 1924, to March 31, 1925. I submit my Exhibit 457, showing the cyanamid tonnage shipped to the Southeastern States during the period mentioned, showing the present freight cost under the rates from Niagara Falls to the Southeast, and the freight cost under the Royster Scale and under the Alabama Scale.

It will be noted that in every State in the Southeast the Royster scale will cause increased freight cost on the cyanamid. This increase would aggregate $26,424.95 per year.

Now, I want you to note that. Mr. Sturtevant made a statement that we were spending a million and a half dollars for improvements in our plant. Now, the railroads wish to assess us $26,000.00 or more to move our cyanamid. (Tes. 1151-53.)

[fol. 781] The Alabama Scale will cause increases in every State in the Southeast except that in North Carolina there will be an insignificant reduction. The net increase under the Alabama Scale will be $7,228.01.

I have prepared an exhibit which shows the weighted average distances with respect to the movement of cyanamid.

I now submit Exhibit 458, showing cyanamid tonnage shipped into the Southeastern States in the period April 1, 1924, to March 31, 1925, showing the weighted average distances that cyanamid moves from the Virginia City Gateways.

This statement also shows the weighted average rate from the gateways to points of consumption in each of the Southeastern States, and the weighted average car mile earnings under these rates. This is shown both as to the Royster scale and the present rates.

The weighted average distances from the Virginia City gateways to the five Southeastern States is 414 miles. In every State in the Southeast the average haul of cyanamid is greater than the average haul for fertilizer materials. This is borne out by the exhibit introduced by Witness Menzies, and numbered 11.

In the State of North Carolina, in which the hauls are the shortest of any of the Southeastern States on cyanamid, the weighted average haul is 197 miles, almost twice the haul on fertilizer and fertilizer material moving between points in the Southeast.

In the State of Georgia, where we ship almost half of our Southeastern cyanamid tonnage, the weighted average haul from the Virginia Gateways is 492 miles, almost five times the distance of the average fertilizer and fertilizer material movement in the Southeast.

[fol. 782] It has been stated by a witness for the carriers, Mr. O'Connell, that on the Central of Georgia Railway System the average haul for fertilizer would not exceed 100 miles, and that the average revenue on fertilizer for the whole of the Central of Georgia Railway System is $1.71 per ton. He also gave the average rate of all traffic as $2.18 per ton, and the average haul 183 miles approximately. Exhibit 458 shows the present weighted average rate on cyanamid from the Virginia City Gateways to the Southeast to be $4.54 per ton. The average haul on cyanamid from the Virginia City Gateways is 492 miles, which is more than four times the average haul on fertilizer on the Central of Georgia. Notwithstanding this, the earn-

ings per ton on cyanamid are approximately as large as the earnings per ton on the fertilizer movement for the average haul of 100 miles.

The present rates on cyanamid to the Southeast are contrary to the general principles of rate making, which recognize that as distances increase the earnings per ton should decrease.

As heretofore stated, the movement of cyanamid has peculiar characteristics. It is in a class by itself, and, as to rates should be treated in the South as it is now treated from Niagara Falls, Ontario, to the gateways, by applying to it proportional rates to the Southeast from the Gateways.

I don't think that a rate scale built around an average haul of 100 miles is applicable to cyanamid—a long haul commodity. It is obvious that a rate scale which is built around an average movement of fertilizer and fertilizer materials of less than 100 miles is not a fair scale to be applied to a commodity which has an average movement of 414 miles.

Mr. O'Connell testified that of all traffic handled by the Central of Georgia, the average distance was 183 miles and the average rate $2.18 per ton.

If the Royster scale be applied to the average distance given by Mr. O'Connell, it would produce a rate of $3.27 per ton.

[fol. 783] As the average rate on all traffic is $2.18 per ton, the rate produced by the Royster Scale would be $1.09 per ton over the average rate. (Tes. 1153-56.)

Although the carriers have repeatedly assured the Commission during the trial of this case that the fertilizer traffic in the South moves under lower rates than any other traffic, Mr. O'Connell's testimony tends to prove that if the scale approved by the railroads is adopted that it would not be a fact. On the contrary, the scale proposed by the respondents is substantially above the average rate for all traffic.

I have prepared an exhibit that shows the revenue under the present rates and average loading on cyanamid from Virginia City Gateways to the Southeast, compared with the revenue under the Royster Scale and the 15 ton minimum proposed by respondents on both fertilizer and fertilizer materials. I submit Exhibit 459.

This exhibit is intended to show the car earnings that would result from the Royster Scale application to the cyanamid movement with a 15-ton minimum as compared with the Royster scale at the average loading for cyanamid at the present time.

We also compare the Royster Scale earnings with the earnings under the present rates from the Virginia Cities.

The earnings under the Royster Scale with a 15-ton minimum are about half what the earnings would be under the present average load of cyanamid on basis of the Royster scale.

The earnings under the Royster Scale with a 15-ton minimum are substantially below the earnings on cyanamid under the average loading at the current rates.

All of this tends to show that the existing rates on cyanamid from the Virginia Cities and Ohio River Gateways to the Southeast are too high.

I have prepared an exhibit which shows the rates on various commodities to the Virginia Gateways to South [fol. 784] Atlantic Ports with the earnings thereto as compared with the rates and earnings on cyanamid, and submit Exhibit 460. This statement shows that there are many commodities moving from the Virginia Cities at the present time, either on local rates, or on proportional rates from the Virginia Cities, to the South Atlantic Ports that either have lower rates than cyanamid rates, or yield the carriers lower revenue per car than cyanamid rates.

As to whether there is anything else, in my opinion, that would justify different treatment of fertilizer materials, or cyanamid, rates, on traffic moving through the Ohio or Virginia Gateways to the Southeast.

Cyanamid moves to the Virginia gateways on proportional rates from Niagara Falls, Ontario. These proportional rates are identical to all Virginia Cities. When a strict mileage scale is used from the gateways to the Southeast, the result would be to divert and concentrate most of the tonnage to the most strategically located gateway in respect of mileage. This would also concentrate in the hands of a few of the Southern carriers most of the tonnage. It would operate to the disadvantage of the carriers operating from other less fortunately located gateways having longer mileages to most of Southeastern Territory. This is true with respect to Lynchburg, Virginia,

on the Southern Railway and Norfolk & Western Railway. These two carriers would be unduly favored to the disadvantage of such gateways as Richmond and Norfolk and to the detriment of the Seaboard Air Line, Atlantic Coast Line, Norfolk & Southern Railway and others.

In my estimation, this condition could be overcome by grouping all of the Virginia gateways and by using the mileage from the nearest gateway to each Southeastern point. This would only apply to traffic originating north of the Virginia Gateways, using these gateways to make [fol. 785] combination rates to the southeast. For local traffic from the gateways to the Southeast actual mileage could apply. That the situation would have to be taken care of in this way is already recognized by some of the Southern carriers.

The inference from my statements just made is plain that the treatment of rates for fertilizer materials and cyanamid coming from the North and moving into the Southeast will have to be different than for the local movement of fertilizer and fertilizer material between points in the Southeast, and which moves for distances averaging only 100 miles.

I heard Mr. Sturtevant's testimony about claims.

Cyanamid gives the railroads a double haul. As we have already explained, the movement of cyanamid into the fertilizer plants and out again in the form of complete fertilizer, is merely a transit arrangement; the cyanamid does not lose its identity as cyanamid. It therefore provides the carriers with inbound and outbound revenue on every pound of cyanamid sold by the American Cyanamid Company. At least half of the rate materials used in the manufacture of cyanamid originate in the United States and give the railroads a haul on these materials, such as coal, coke, bagging, machinery, which constitutes two-thirds of the rate materials used in making cyanamid. (Tes. 1156-60.)

I think that for the cyanamid movement, considering all points that have been raised here, such as the average haul; the average loading; the average earning per car; the fact that there is little or no risk; there have been no claims; constancy of movement; the fact that it helps fertilizer car supplies when needed in the South; the fact that rail carriers obtain the total haul; that it must compete

with European cyanamid, all, in my judgment, suggest that we should have a rate of 62 per cent of the present fertilizer rates in the Southeast, or whatever scale the Commission makes effective.

[fol. 786] The conditions surrounding the movement of fertilizer and material are not substantially different in Trunk Line Territory than conditions in the Southeast. This is particularly true as to our cyanamid. The testimony indicates that fertilizer rates in the Southeast are, generally speaking, on a lower basis than the fertilizer rates in Trunk Line Territory. Our testimony shows that the rates on cyanamid in Trunk Line Territory are substantially lower than the rates on fertilizer. The rates on Cyanamid in Trunk Line Territory are lower than the proposed Royster scale. Since fertilizer rates in the Southeast are lower, generally speaking, than fertilizer rates in Trunk Line Territory, and since cyanamid rates are lower in Trunk Line Territory than the fertilizer rates, it follows that the rates on cyanamid from the Gateways to Southeastern points should be lower than the fertilizer rates. We feel that cyanamid rates in the Southeast should be about 62 per cent of the fertilizer rates. The proportional rates on cyanamid from Niagara Falls to Virginia City Gateways are 62 per cent of the fertilizer rate. (Tes. 1160-61.)

Cross-examination:

Assuming that it is true, and it is true that the Southern carriers in this proceeding are proposing to establish the fertilizer rates on cyanamid imported through the South Atlantic Ports and the Gulf Ports, charging the full Royster Scale, as to what traffic or transportation reasons I can think of that would justify the Southeastern carriers in establishing rates from Ohio River Crossings or Virginia Cities made 62 per cent of that scale on business from Niagara Falls: I think we show that the American Cyanamid Company's cyanamid sustains a rail haul of 1,200 miles in the United States.

"Q. Viewing this thing from the standpoint of the Southeastern carriers, import cyanamid also sustained a trans-
[fol. 787] portation charge, and this is a question purely of Southeastern transportation, viewed from the standpoint of Southeastern carriers, what justification would they have for charging a rate 62½ per cent higher from Virginia cities and Ohio River crossings for corresponding distances as they charge from South Atlantic Ports and Gulf Ports?

"A. Now, let me tell you, you may have a proportional rate from junction points or gateways on long distance traffic that might be different from the local rate in that section.

"Q. But these are both used with the proportional or divisional rates, whatever you want to call them. The circumstances are both the same, so far as Southeastern lines are concerned.

"A. Well, they are the same only to the extent that they are the same commodity. The average hauls are different."

We have not shown in this case that the average hauls on import would be longer than the domestic. We have not shown that the average haul of the fertilizer material is 100 miles. Cyanamid was considered as a material, we supposed. We thought that when we were making these statements, that you were talking of cyanamid as one of the fertilizer materials.

I have nothing to say about the import rates, import cyanamid rates. I have no views to express about the transportation or traffic conditions which would justify rates from the Ohio River crossings and Virginia cities to the Southeast 62 per cent of the rates applicable from South Atlantic Ports or Gulf Ports to interior Southeast, except that cyanamid moves from longer distances, and probably on higher carload minimum, and carloading.

I do not know how the import cyanamid cars have been loading, but in the absence of any such testimony, why, I presume it is on the carload minimum. I don't suppose it would help our company at all if the cyanamid rate propo-
[fol. 788] sition were considered alone, and the imported rate made the same proportional of the fertilizer rate as the proportional rates that I suggest, namely 62 per cent,

or some per cent of the fertilizer rate, as a general proposition, but since our rates from the competitive gateways are not so high, and the rates from the ports are low, on a percentage basis we would get more reduction, would we not? (Tes. 1161-64.)

If they reduced the rate on imported cyanamid, considering that my testimony shows that some of the largest points of consumption are at the ports, and that cyanamid from the ports inland is probably a small thing, and, giving us a per cent basis, and even if they gave it to the European men, which is not shown to be necessary at all, nobody is here asking for it, it would help us, because 50 per cent of our business is at the South Atlantic Ports. There is no rail haul sustained on the imported stuff, you know. The principal grounds or demands for reduction are not patriotic motives. Competitive motives.

The value of a ton of our product is about $43.00 a ton.

"Q. You have a situation here, you spoke about it being a raw material. As a usual thing, raw material is worth less than the finished product, is it not?

"A. Well, sometimes it is."

In our case the raw material is not more valuable than the ton of fertilizer in all cases. I am not prepared to say if it is more valuable than a 10-2-2 or a 10-3-3, or 8-4-4. I think Mr. Davis' exhibits show what the average prices of fertilizer are, and the comparison can be made with that exhibit.

"Q. Now, if a scale either submitted by the carriers or submitted by the fertilizer interests was submitted by these parties for the purpose of applying that scale, both on the materials and on fertilizer, if you were to have a lower rate on materials, then you ought to have a higher rate on fertilizer than perhaps for either, should not you?

[fol. 789] "A. Well, that depends upon how you look at it. We are asking for proportional rates to carry a long-haul traffic here. I think it is on a different basis."

We are not satisfied with your proportional rates down to the Ohio River. I think our rates to Virginia cities are fairly reasonable.

Exhibit 457 shows that, in South Carolina, out of 8,160 tons, 5,846 moved to Charleston. Our rate there to Charleston is today materially lower than our rates to any intermediate point. We have had a heavy tonnage to Savannah, Georgia, too, and that is materially lower than our rate to intermediate points like Atlanta.

Well, I don't think I am prepare to talk about a selling point of cyanamid, but I might say this; that the sale of cyanamid is not curtailing the sale of sulphate of ammonia or other ammoniates in the Southeast. I don't think if you were to educate the Southern fertilizer manufacturers as we are endeavoring to do, this cyanamid will displace these other materials, for the reason that you can only use about 60 pounds of cyanamid per ton of mixture. Well, it might displace something else. It might. I don't know what the physical conditions are. I really could not testify on that point.

If you assume that a given consumer would buy sulphate of ammonia or nitrate of soda, that instead of that, they would buy cyanamid, of course I should think to that extent it would displace it. I imagine, I think, that the Southeast consumed about half a million tons of sulphate of ammonia. I think about a million tons of nitrate of soda is imported from Chile, and my exhibit shows about 38,000 tons of cyanamid. (Tes. 1164-68.)

Mr. Sturtevant has shown that cyanamid competes in a sense with sulphate of ammonia and nitrate of soda.

"Q. Now, can you say how much tonnage of sulphate of ammonia a ton of cyanamid would displace?
[fol. 790] "A. Well, I imagine 60 pounds in the ton, that is the way it is used."

It would not displace two tons. Probably displace an equal quantity, because the analysis of sulphate and cyanamid is about the same. Well, it might displace a little more than nitrate of soda. In other words, if nitrate of soda is used, there would be a greater quantity used in the manufacture of a given quantity of fertilizer than if cyanamid was used; 60 pounds to the ton more.

Our price of $43.00 a ton is f. o. b. Niagara Falls. As to how I arrive at 62 per cent of the fertilizer rates as the

proper basis for these proportional rates: You will see from Exhibit No. 452 that cyanamid moves from Niagara Falls, Ontario, to the Virginia Gateways at rates 62.7 per cent of the fertilizer rate.

We have taken north of the Virginia Cities as your basis; proportional rates on Virginia Cities.

"Q. Should cyanamid be accorded any different treatment than other commodities that originate north of the Ohio River? In other words, should the Commission prescribe this rate of .62 per cent on cyanamid, should not it also be made applicable on other fertilizer materials, such as tankage, for instance?

"A. Well, if those commodities are involved in the same competitive situations that we are, probably so. We have a big competition with European cyanamid that none of these other commodities have."

As to whether our greatest competition in the Southeast is with cyanamid, or with the sulphate of ammonia and nitrate of soda: Mr. Sturtevant testified on that point. I believe he showed that our competition is with nitrate of soda and sulphate, as well as European cyanamid.

[fol. 791] Mr. Sturtevant:

You cannot say any one of these is a competitor except to this degree. A mixer can use sulphate of ammonia, and cyanamid; he can use nitrate of soda and cyanamid, but for every pound of foreign cyanamid he uses, that takes a pound away from us. In placing our commodity down here we come in competition with a large measure, with sulphate of ammonia and nitrate of soda, and the extent that we are able to have them use our commodity, it would displace a certain amount of those other two. (Tes. 1168-1172.)

R. G. Conn was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

(Statement): Mr. Examiner, I won't consume very much time; my exhibits are mainly going to show the local situa-

tion out of Mobile on import and domestic fertilizer rates.

So far as the measure of the rates in this case is concerned, I of course adopt the scale of the National Fertilizer Association, which, as I understand is the same scale as the Alabama State that is now under attack.

I was in the Alabama State Case, and when those rates were submitted I was an advocate of what we proposed, and which the Commission of Alabama practically allowed.

(Certain statements were thereupon received in evidence, and marked "Protestants' Exhibits Nos. 461 to 466, inclusive, Witness Cobb.")

Exhibits Nos. 461, 462, 463, and 464 may be filed at one time, as they all cover the same principles.

They simply show the rates from Mobile to the lines that lead from Mobile.

The L. & N. Railroad, Southern Railway, the M. & O. Railroad and the G. M. & N Railroad. I have compared with the present rates and proposed rates of the carriers, [fol. 792] and also have shown the Alabama mileage rates which are practically the same as the National Fertilizer Scale here submitted by the National Fertilizer people.

In most cases, the proposed rates are increases in the present rates.

The proposed rates are also increases in most cases over the Alabama mileage rates.

I have shown on Exhibit 463 not only the Alabama mileage rates, but the present Mississippi rates on Mobile & Ohio Railroad.

I am sure that rate is correct; $2.30 for 5 miles to Whistler, Alabama. That is the Meridian Case rate, I understand. Whistler is 4 or 5 miles out of Mobile, and in the switching limits of Mobile, Alabama.

I have shown some Mississippi mileage comparisons on the V. M. & N. Railroad, Exhibit No. 464.

Exhibit No. 465 shows present imported fertilizer rates and the fertilizer material rates from Mobile, compared with the present Alabama State rates, and also the proposed rates of the carriers. As stated before, the proposed rates of the carriers are somewhat higher than the present rates, and they are also higher than the Alabama mileage rates for similar distances.

You understand these exhibits are given to show my local situation, there have been several general situations around here, but the local situation, and in order to show exactly what effect it has on one of the ports.

Exhibit No. 466 shows the imported fertilizer rates from Mobile to Mississippi Valley points. The proposed rates shown in Column 2 of the rates were obtained from the exhibit furnished me by Mr. Chadwick, of the Mobile & [fol. 793] Ohio Railroad. I wish to call your attention to several of the inconsistences of that exhibit that he has not yet filed, but which I understand the carriers propose to operate if they can.

Mobile to Hattiesburg, Mississippi, on the first page of that exhibit. You will notice that the carriers' scale from Mobile to Hattiesburg produces $2.59. However, they propose that specific rate on import fertilizer from Mobile to Hattiesburg, $2.70 a ton. You will find that condition also exists at Okenna, Masterton, and several other points in the Mississippi Valley.

I assume, or to me that maladjustment is caused by the G. M. & N. Railroad being the leading line, and that line in the past has always claimed it was a weak line. At this time, however, the G. M. & N. Railroad is not in the condition it was in the past, and as this is a competitive stuff that goes into territory that the other lines compete with, the G. M. & N. Railroad should not exceed by any means the carriers' proposed scale.

I will now touch, a couple of minutes, on this port relationship. Port relationship has been considered a matter of some study with me for the last two or three years. To begin with, the grouping of the ports is, I would imagine, and should be something according to the distance one port is to the other. For instance, I will take Mobile & Pensacola. In the past, Mobile and Pensacola, to points to the north via the L. & N. Railroad, have, as a rule, been the same, and I understand that it is the L. & N.'s policy in the future to carry that adjustment to points on and north of Montgomery and Selma, but when we come to points south of Montgomery and Selma, where the distance from Pensacola to those points such as Greenville, Georgiana and Evergreen, the L. & N. Railroad in some cases has published lower rates on fertilizer imported from Pensacola

than they do from Mobile. The difference in distance is [fol. 794] only 16 miles, and in the past I have always considered Mobile on the main line of the Louisville & Nashville Railroad, and Pensacola as on a branch line. Certainly that is the condition so far as passenger traffic is concerned.

To sum it up, I think that distance should be somewhat of a guide in making the import and export rates on fertilizer. Distance also should be a dominant factor, but not the predominant factor. The carriers in the past, and we have always understood that these export, domestic and coastwise rates were nothing more or less than proportional rates—in other words, divisions of through rates on traffic going abroad and received from abroad, and there should be some sort of flexibility in the equalization of the ports, especially when the mileages are only about 16 miles different.

Commissioner Eastman, in Docket 13494, at page 657, has somewhat remarked about the distance rates—distance class rates. He says, that: "Flexibility should be permitted in the application of the scale. There is nothing sacred about distance rates. • • •

"The distance rates prescribed are maximum rates. In addition to the minor deviations from a rigid application of the scale which are mentioned above, the carriers may publish lower rates than the scale provides, to the extent that this can be done without creating undue preference and prejudice, or by common consent of the shippers and communities affected. To avoid undue preference and prejudice in such cases, the carriers must be able to show that the reduced rates will not benefit one community which they serve to the injury of another so served; and to show this, inasmuch as all communities are producers and consumers of class-rate traffic, it must at least be established that competitive conditions require the reduced rate at the favored point or points and that similar conditions do [fol. 795] not exist at the point or points which are not so favored."

Now, as to the wharfage, terminal, and other accessorial charges at the ports. I think that such charges should be separated from the line-haul rates. This is in accordance

with the practice that is now going on, as testified by Witness Burke yesterday, in which the municipalities and others than the railroads are taking over the port terminal facilities. In the past and present, you might be a high port, and the terminal charges published at these ports might not cover the cost of handling between ship and cars, but they are published and of course if the charges are higher than the actual cost of transfer, why, that is taken out of the line-haul rate. In other words, the terminal charge in some cases can milk the line haul, which they have done in the past and are now doing. (Tes. 1173-1178.)

Cross-examination:

In my Exhibit No. 466, I indicate that in respect to import rates, the carriers in some instances perhaps propose rates higher than the present scale.

"Q. Do you understand that the carriers contemplate doing that in any case?

"A. From the exhibits furnished me by Mr. Chadwick, that is what they worked out. Hattiesburg, Mississippi, for instance."

In my Exhibit No. 466, I show the proposed rate to Hattiesburg from Mobile to be $2.70. On Exhibit 465 I show the rate from Mobile to Hattiesburg as proposed, to be $2.82. The explanation of that difference is: I don't know; have you the carriers' scale here? May I check that, and file an exhibit to recheck it? I did not make the figures myself, and what I am trying to compare is the mileage proposed by the carriers against the specific rates proposed by the Mobile & Ohio Railroad in the exhibit furnished by [fol. 796] Mr. Chadwick of the Mobile & — Railroad. There might be some minor deviations there.

Referring to Exhibit 465. If we were to substitute the Alabama Commission's scale for the present rates from Mobile, you would produce in practically every instance an increase over the present rates, and some of them materially. So far as I know the present rates that I show on Exhibit 465 from Mobile were voluntarily established by the carriers. They have been in effect for some time. And as to the increases, let us take Birmingham, Alabama, the

present rate, $2.93. The Alabama rates now, which the carriers are attempting to use—some of the carriers—on sulphur is $3.65, the Alabama mileage scale. They are attempting in that case there to apply the mileage scale on coastwise business, not on import business.

In so far as these wharfage charges and handling charges, etc., terminal charges at the ports on import and export traffic, I agree with the carriers that any question as to those charges is not involved in this case. All I am trying to do is to get to the method of separation. I don't think that the wharfage and terminal or accessorial charges at the ports should be applied at shipside. Let us let the municipalities get their subject before somebody later on. (Tes. 1179-1181.)

(Witness excused.)

EDGAR MOULTON was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

(Statement:) My name is Edgar Moulton; I am assistant general manager, New Orleans Joint Traffic Bureau, at New Orleans, which position I have held for about 7 years, and prior to that was in railroad service for approximately 15 years.

As I understand the testimony that has been introduced with respect to import rates, it goes to the application of [fol. 797] the proposed scale on domestic traffic. It is our thought that while it is true that on domestic fertilizer the movement is at relatively short hauls, the reverse is true on imported fertilizer materials. Those commodities moving not only at short hauls, but also at long, as well.

We do not believe that a mileage scale should be made to apply on the long-haul on import fertilizer materials. The scale might be used as a guide to determine what the level of those rates should be, but it should be stated that it is entirely flexible and can be departed from at will by the carrier, in order to meet the necessary competition at the long haul.

Now, with respect to the equalization of ports. It has always been our thought that the carriers should have the right to equalize ports on export, import, as well as coastwise traffic. I recognize it is a very difficult matter to draw any special line where that equalization should begin, but a great deal of thought to the subject brings me to the conclusion that at a point 200 miles or more from any given port, which is generally grouped with another port, that the carriers should have the right to equalize those two ports, if in its thought that equalization is right.

"By Mr. Cobb:

"Q. Mr. Moulton, you know that from New Orleans to Birmingham on fertilizer material at the present time imported, the rate is $2.93 from New Orleans and Gulf Ports and Mobile. Would you consider it proper to group those ports on that distance, 354 miles from New Orleans?

"A. On import traffic yes, Mr. Cobb.

"Q. 269 miles from Mobile?

"A. On import traffic, if the carriers serving New Orleans and Birmingham, as well as the other ports, think it is proper to group those ports on Birmingham traffic, I believe they should be allowed to do so.

[fol. 798] "Q. Why an exception on fertilizer, when on the iron and steel articles there has been for sometime a differential, Mobile under New Orleans?

"A. The differential is there, but it has never been fixed by this Commission, and the views that I express with regard to fertilizer apply equally well to iron and steel, and all other commodities. Does that satisfy you?

"Mr. Cobb: All right."

I mean the points should be 200 miles distance from the nearest port. It would be more than 200 miles from the other. I do not want to be understood to say that the carriers should be forced to equalize, it should be left to the discretion of the carriers. I recognize that the equalization of the ports carries with it many conditions in respect not only to the commodity, but to the movement of the commodity, and where equalization might be proper in some instance, it might not be so in another instance, de-

pending entirely upon the commodity. If the point was 100 miles from Mobile, and 250 miles from New Orleans, I would not expect to be equalized there. (Tes. 1181-84.)

(Witness excused.)

L. F. Orr was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

(Statement:) I want to offer at this time my Exhibits 467 to 471, inclusive.

(The statements were thereupon received in evidence, and marked "Protestants' Exhibits Nos. 467 to 471, inclusive, Witness Orr.")

Exhibit 467 is an itemized statement of the inter and intrastate movement of fertilizer for the year 1924 to Kentucky points. This statement is compiled from records [fol. 799] furnished by fertilizer companies doing business in Kentucky but does not include movement by water or movement to points on the C. & O. It will be noted we have shown origin, destination, short line mileage, number of cars involved, tonnage, present rate and rate proposed by carriers, and have extended present and proposed rates and compiled an earning test, detail of which is shown in an exhibit to follow.

Exhibit 468 is taken from a statement of the Bureau of Agricultural Economics of the U. S. Department of Agriculture. In this statement they say that if a wage paid hired hands is allowed for labor of the average operator, his own capital invested in agriculture earned no returns during 1920-21 and 1921-22 and only 1.4 per cent during 1923-24. In July Crops and Market Supplement, Volume 2, Supplement 7, they show a reward of only 3.6 per cent for operators net capital investment and management.

I might say there too that the reason I did not include that in the exhibit was because it was only issued this last month.

They say on page 236, "The improvement from agricultural production during past year from 11.3 billion to 12.1

billion dollars is due almost wholly to the higher grain and meat animal prices, particularly wheat and hogs." These are commodities the South imports in appreciable quantities and to such an extent this increase will not be reflected in the Southern farmers earnings column, but instead it will no doubt mean an increased operating cost to him. In this report they further state, "These returns are a considerable improvement over 1921-23, but they are still inadequate when compared with annual wages paid to hired labor. In 1924-25 the average reward for the labor of a hired hand was $569.00, while that remaining for a farm operator and his family would be $649.00. They show further that in [fol. 800] addition to the inadequate returns on capital and labor, the value of all property used in agriculture has been deflated in 5 years from 79.6 billion to 59.4 billion, a loss of over 25 per cent. The farmers own capital invested has been deflated from 48.1 billion to 33.4 billion, a net loss of over 30 per cent. These are farmers all over the United States. Not the farmers in Kentucky. I will speak of the farmers in Kentucky a little later, Mr. Commissioner.

It will be noted from page 2 of this exhibit that return on total capital after deflation was only 3.1 per cent and if you were to use capital investment as of 1920 you would have an earning slightly in excess of 2 per cent.

Exhibit 469 shows a price index of farm product values by groups of commodities. It will be noted all group average only 30 per cent increase over pre-war. Page 220, Volume 2, Supplement 7, Crops and Markets for July, 1925, shows index for May, 1925, as 46 per cent above pre-war compared with index of 61 per cent above pre-war on non-agricultural commodities, and shows agricultural group to bear a 90 per cent relation as compared with a 100 per cent pre-war base for both groups. The increase from 130 to 146, June, 1924, over May, 1925, is almost wholly due to meats and grains of which the South is an importer as has previously been explained.

Exhibit 470 is a survey of 15,103 farms for the year 1924. I have been engaged for a considerable extent during the past ten years making a study of farming conditions and know from my personal experience that farms used in these tables are far above the average, particularly as

to Kentucky farms, and I know their gross cash income will not average exceeding $500.00 per year. In one county in which I made a survey and am entirely familiar, I found their gross cash income would not exceed $450.00 per year. [fol. 801] It will be borne in mind this farmer has to pay taxes, insurance, keep his house, fences, outbuildings, etc. in repair, buy school books, clothing for his family, replace implements and buy the provisions he does not produce. In addition, the physical condition of the average farm is not nearly so good as in 1920, because the farmer has not had the money to even keep up his running repairs. The farmers in the South are the main victims of soil depletion for the last century, and it has only been during the last few years they have learned their soils may be reclaimed profitably, and they have not yet put into practice the work of reclamation to the extent they have even checked erosion and depletion. A question usually raised by the average farmer when I explain that the Department of Agriculture has proven that soils may be reclaimed profitably is "Where am I to get the money for the purchase of plant foods?"

It is a problem for the farmer to find enough above expenses to buy fertilizer. It will be noted from the tables in this exhibit that the South Atlantic States had a decrease in earnings for the year 1924 compared with 1923, and the South Central States only earned $169.00 more, or a total of $1,059.00.

I am not unmindful that these carriers are entitled to a fair return and do not believe a scale should be established that will not yield cost of service plus a fair return. It seems apparent that the condition of the fertilizer industry is such that any increase in rates will be passed on to the farmers, in my judgment a scale lower than the present average would yield not only a fair return, but as well, will encourage the use of plant foods, increase production, and thereby increase the purchasing power of the farmer, which will reflect in the earnings of the carriers in the increased tonnage hauled, made possible by this increased purchasing power. The Illinois Central and many other Southern car- [fol. 802] riers have realized this, and now voluntarily maintain a scale much lower than the Royster Scale. I might say there, that all of those rates in Kentucky were voluntarily established rates by the carriers.

Exhibit 471 is a comparison of earnings on fertilizer under present and proposed rates compared with the average of all freight for all Southern lines, year 1923. The present average rate on fertilizer per ton in Kentucky is 43 per cent higher than the general average of all freight for Southern lines, and the increase proposed by carriers would yield 16 per cent more than present rates. The average weighted haul on fertilizer is only 186.96 miles, while the average haul all freight is 214.24. The average car-mile earnings, all freight, is approximately 30 per cent less than present fertilizer car-mile earnings.

In the carriers' testimony at Atlanta it was proposed that Ohio River points be equalized as before. In their previous equalization of these crossings they have not only equalized the crossings, but as well they have equalized the crossings with inland points 100 miles or more farther South on movements from and to Southern Territory. Taking Lexington as typical, Lexington takes Cincinnati rates to and from the South, but when Lexington even under the principles laid down in 13494 has to pay a proportional over Cincinnati on shipments destined to Official Territory. It appears to us that if Lexington and other inland points are to be put at their mileage disadvantage on shipments moving over Cincinnati, then Cincinnati and other river crossings deserve like treatment on shipments from and to the South. (Tes. 1184-1190.)

"By Com. Eastman:

"Q. Are you not mistaken about Lexington being differential over Cincinnati to all Official Territory?

"A. All of C. F. A. Territory, Mr. Commissioner.

"Q. Trunk Line Territory?

"A. In Trunk Line Territory it takes Louisville basis, [fol. 803] but it does not take Louisville basis going South, though."

There is a disparity there, they give Cincinnati rating going South, and 87 per cent to points in Trunk Line Territory, and from points in Trunk Line Territory they give Lexington a 100 per cent basis, the same as Louisville. Now, under the principles of 13494, Lexington should have a lower rate than Cincinnati, going south. I do not believe

there is any more reason for equalizing this situation than there would be reason to equalize New Orleans with Jackson, Mississippi. Carriers also testified at Atlanta there were no fertilizer plants at Lexington. In my opinion, there will never be, or any other kind of manufacturing plants at any inland points so long as this situation continued.

When I spoke of the condition of the Kentucky farmer, that included the farmer who raises the Burley tobacco. Of course there is a little section around Lexington there, consisting of some probably 10 or 15 counties in which it will be probably noted by this traffic test, they did not even use any fertilizer. They produce their own, all that rich Blue Grass section, but right around in that same section is a bunch of so-called pauper counties it will be noticed that the bulk of the fertilizer movement to Kentucky moves to those so-called pauper counties. They have tried to, but they have never restricted the production; they have never got enough percentage of the farmers into the Association. (Tes. 1190-91.)

(Witness excused.)

F. W. Gist was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

Name, F. W. Gist; residence, Auburn, Alabama. I am an agricultural statistician.
[fol. 804] At present I am generally employed by the Federal Government and the Alabama Extension Service, and am also ex officio the State Statistician of the Alabama Board of Agriculture. The basic duties are to estimate farm production. Relatively with that part of our duties for the State Department of Agriculture and the Extension Service, to interpret those statistics after they are gathered. I have been engaged in the work of agricultural statistician a fraction over 19 years. I have been employed in this work in and for the State of Alabama, since 1915, about 10 years and a half. Immediately prior to that I was employed in this same work, for the remainder of the 19-year

period. In other words, I have been continuously employed in this work for some 19 or 20 years.

Prior to my work in this business in Alabama, the field of my work was: Beginning with 1906, first in Arkansas and Louisiana, next in Oklahoma and part of Texas, then taking over briefly the State of Colorado, from there to Kentucky and Tennessee. Incidentally, during the time brief periods of employment in Mississippi and Georgia. During all of this time I have been employed either by the United States Government or by some of the several States; usually in cooperation with the States. My chief employment is under the United States Department of Agriculture. The Alabama Extension Service is a service maintained jointly by the United States Department of Agriculture and by the Agricultural College. I refer to the Alabama Polytechnic Institute at the Agricultural College. It is a State institution, and the leading agricultural and mechanical college, or University, in Alabama.

The general nature of the work of the Alabama Experiment station is to make experiments in all parts of the State to determine the best methods of farming, the various crops to grow for which certain soil types are fitted, and also ex- [fol. 805] periments in fertilization and soil building, and the matters pertaining to the farm. I know of tests that have been made by this experiment station in the past few years for the purpose of determining the value of fertilizers in the production of cotton in this State; I have just recently been furnished the results of such experiments by the director of the station.

They made those tests in 48 localities in the State, covering all soil types, and farming systems of the State. Those tests are usually made in cooperation with some actual farmers, and they would in this case be made by growing a certain amount of land without fertilizers, another certain amount with certain amounts of fertilizers, and another certain amount of land with other amounts of fertilizers. The results of those experiments were as follows, and the figures I give are averages for the 48 experiments.

With no fertilizer they produced an average of 98 pounds of lint cotton per acre; with 325 pounds of fertilizer per acre, produced an average of 203 pounds of lint per acre;

with 650 pounds of fertilizer, produced an average of 260 pounds of lint per acre.

They were all made in the same years, they are 1923 and 1924, covering two years, in the same places at the same time. I can give the average yield of cotton for Alabama during the same two years. In 1923 the service which I represent estimated the average yield at 91 pounds, and in 1924 at 154, being an average for the two years of 122 pounds. I speak in terms of lint cotton per acre.

For those same two years we estimated the amount of fertilizer used per acre at about 230 pounds, being 238 for 1924 and slightly less than 230 for 1923.

We have checked our estimates of production for cotton against the United States Census final ginning reports, and [fol. 886] find over a period of years we obtained an accuracy of from 95 to 98 per cent. That is in checking our figures of our State service with the actual figures of the Department of Interior on final results.

As to what percentage of accuracy the United States Board of Health requires of a State before the State is admitted into what they call the Bureau of Vital Statistics: The Bureau of Vital Statistics is a part of the United States Census Bureau. They require an approximate accuracy of 90 per cent before admission into that area. Our average has been from 95 to 98 per cent accurate for the country as a whole. (Tes. 1192-97.)

As to whether I can tell what the cost of producing cotton over the entire cotton producing belt has been in recent times: That is a question which may not be answered with any degree of accuracy. A good many surveys have been made, but unfortunately, any survey is usually made with the better class of farmers, and requires more or less of adjustments to lower yields, so that to answer the question directly as to what it costs to produce cotton, it is hardly possible to do it. In noting those surveys, however, some other related facts have been shown, which are accepted as relatively accurate.

A recent survey on that subject showed that where the expenditure for fertilizers was less than $2.00 per acre, the acre yield averaging only 36 pounds of lint. With an expenditure of $3.45 on the average, the yield was 143 pounds average. With an expenditure of $4.80 it was 223

pounds; with an expenditure of $6.90 it was 308 pounds; and with the expenditure of $7.40, it was 380 pounds. That was disclosed by the most recent survey that was made by our own bureau of the Department of Agriculture.

Practically all cost surveys have shown that the increased use of fertilizers up to a certain limit has resulted in an [fol. 807] increased yield per acre, not only for cotton, but all other crops. It applies to all crops.

A study of the United States Census report for 1920 discloses the fact that the Southern cotton-growing States lost from the farms during the preceding 10 years, about 600,000 negro population; about one-third of which were actual farm laborers. I might say that all censuses have shown interstate and intrastate migration of population from the farms to the cities, from the cities to the farms, but it was never so great as during that period. Most of these losses which I refer to as relating to the negro population were from the Southeastern cotton growing States. Some of them migrated to the industrial centers in the South, perhaps a larger number to the industrial centers of the North, and East, while some actually migrated, as has been the case in a number of decades, from this farming section of the country across to the Western or Southwestern section. Texas and Oklahoma.

As to what, from my contact with these matters, and my experience, is the cause of the migration of these negro laborers from this section into these other sections, or from the farm into the industrial cities of Alabama: Undoubtedly it was started by the infestation of this section of the country by the boll weevil, which makes cotton growing much more difficult, and resulted in the negroes finding it next to impossible to grow cotton profitably under the systems which they had been taught for years; of course, encouraged by the higher wages in the industrial vocations, and opportunity for doing more profitable farming in the Western States, where the weevil is not so damaging. In the last few years the farmers have learned quite a good deal about the control of the boll weevil, and also about methods of farming so as to get the cotton crop matured, and escape the attack of the boll weevil.

[fol. 808] We found that that unusual emigration continued up to perhaps as late as 1921. Since that time there

has been a continuation of migration, not quite to such an appreciable extent, but still continuing. In my judgment the cause of this emigration is chiefly the temptation of the higher wages in industrial vocations. The experience of the farmers in this Southeastern Section with the boll weevil has led to an increased use of fertilizer in order to combat the boll weevil itself; the increase has been very decided in some States, and due to the reduction of the carload rate usually follows immediately the infestation by the boll weevil some less fertilizer, but on the whole an increase; the increase coming in States that have had their weevil experience for about five years. That seems to be the period during which the farmer learns to combat the weevil, and apply the improved methods of farming.

As to how the farmers have undertaken to meet this loss of farm labor, and how, in my judgment will they have to undertake to meet it in the future: We find that two things are necessary, and have actually been practiced. First, is better systems of acreage distribution, and farming methods leading to a larger utilization per man of crop acres; and second, by increasing the yield per acre by some method of soil building, the latter being chiefly accomplished by the increased use of fertilizers. (Tes. 1197-1202.)

I have made study of the surveys of the United States Department of Agriculture relative to the average net income of farmers throughout the United States. A recent survey by the Department determined the average net income of the farmers reported. It transpired that the farmers reporting in this survey were above the average size of farms, as measured by acres employed, so that it was necessary to reduce their findings to a per acre basis, and then apply that to the known average size farm, in order [fol. 869] to determine what it meant to the average farmer. I took occasion to make such an application, which gave me the following approximate results. That the net income per farm in the North Atlantic States—this is for the year 1924—was $700.00; the net income for the South Atlantic States was $280.00. The South, $250.00—for the east South Central, $255.00; for the West South Central, $574.00; for the East North Central, $807.00; for the West

North Central, $1,731.00; and for the far Western States, $216.00.

The average sized farm in the North Atlantic States approximately 100 acres; for the South Atlantic 84 acres; for the East South Central 75 acres; for the West South Central 174 acres; for the East North Central 109 acres; for the West North Central 234 acres; and for the far Western, about 316 acres. The far Western includes the Mountain and Pacific States, and they vary—those two sections vary, and the average for the entire group is about 300.

The East South Central—Kentucky, Tennessee, Alabama and Mississippi. In the South Atlantic are all the States on the Atlantic Coast, from Maryland to Florida. In the West South Central, Louisiana, Texas Oklahoma, and Arkansas. The South Atlantic, and the East South Central are the chief users of commercial fertilizers. The farmer used 3.6 million tons, and the latter one million tons, out 4,900,000 tons used this year by cotton producing States.

I have made a study of the production of cotton in Alabama and Georgia as compared with the like production in Texas and Oklahoma. As a basis for comparison, the average yields for five years in Alabama were taken as 100. It was found that the average yield in Georgia for the five leading crops was 98 per cent of Alabama's yield, while Texas was 139, and Oklahoma 129.

I included in that five leading crops, cotton, corn, hay, [fol. 810] oats, sweet potatoes, which are common to all four of the States.

Cotton, by long odds is the most important of these.

As to whether, so far as the value of the crops is concerned, cotton would exceed all the others put together: Hardly in those four States, due to the fact that Oklahoma raises a good deal of grain, both of wheat and oats. I should say that in Alabama and Georgia, cotton easily exceeds all other crop values.

In the first place, Texas uses practically no fertilizer in cotton production. Less than 1 per cent of the cost of production of cotton there is due to fertilizers. They do use a little, but just a few tons. Oklahoma uses almost none, I think about 49 tons this year.

In interpreting the meaning of these comparisons, as they relate to the future, we think clearly that Alabama

and Georgia must meet the competition of Texas and Oklahoma. They are able, with the use of fertilizers, and by their increased yields, due to natural soil facilities, freshness of soil, etc., to produce cotton at a less cost than we can, so that we must meet that competition or get out of the cotton-growing business; with their large acreage yet undeveloped, they can put us out of the business by growing cotton at a price which will not return us the cost of production. Of course, that means ultimately that we must quit growing cotton, or meet that competition, and I think that to meet it, we must increase our acre yields, following an increase in soil fertility, and the easiest, quickest and best method we have found so far is to use commercial fertilizers. Now, we are very frank to say to the farmer that that is not a permanent soil building, but we find that the farmer sees fit to increase his yields by increased fertilizer uses. (Tes. 1202-1206.)

[fol. 811] While it does not build the soil permanently, it does greatly increase crops, as I have shown.

I have recently prepared a bulletin for distribution by the Extension Service on the cost of farming, rather on the subject of economic production, which goes in in part to the general cost of farming.

It became necessary in the compilation of this statistical bulletin to again compare Alabama and Georgia as being of one type, or Texas and Oklahoma of another type, and in doing so we made a calculation from the estimates of our Department which includes the cost of general farming, consisting of man labor, interest on investment, capital, team-labor, and fertilizers. Those are the four main items in cost, in farm production. That was made for 1924. We found in that year that Alabama farmers, by comparing the cost of those four general items with actual yield of crops or production of crops—we found that Alabama farmers lacked $34,000,000.00 receiving the full wage rate paid to farm workers. I might explain that in finding the cost of production, the farmer is always credited with his wage rate, if he is a worker, and he usually is. The same way with the value of members of his family, if they work on the farm. Now, it is assumed, we think practically, that the hired labor on the farm, the interest on invested capital, which must take care of taxes, upkeep of the farm,

etc., and fertilizers, and team labor, which takes care of replacement, and feed of the teams, must be paid. There is no way the farmer can get around paying for those items, so that what is left, must pay, if at all, his wages and his profit. If there is nothing left, of course he gets nothing for his wages, or that of the members of his family. So that on that basis we found that the Alabama farmers lacked $34,000,000.00 receiving as much as they should have paid out for those items. The Georgia farmers failed in the [fol. 812] same respect by $112,000,000.00. On the contrary, the Texas and Oklahoma farmers received their full wage rate, and a profit besides, amounting to $81,000,000.00 for Texas and $84,000,000.00 for Oklahoma.

Fertilizer is used in Alabama according to the records of the Department of Agriculture—State Department—have increased from 180,000 tons in 1921 to 580,000 tons in 1925. The State Department selling tax tags for those two amounts in the years named. The laws of Alabama require the fertilizer sold to carry these tax tage, and they are issued by the State Department of Agriculture. In that way a very accurate check on the amount actually sold in the State has been kept.

As to what, in my judgmenf, this increased use of fertilizer in Alabama is due to: It is undoubtedly due in large part to the encouragement on the part of the organized workers in agriculture, officially and otherwise, who are, and have maintained for several years past, a definite program of soil building and heavier use of fertilizer. I refer especially to the Experiment Station, the Extension Service, and all agrictultural workers connected with those two services, including the State Department, and there are some private workers, who are cooperating, such as the Railroad Agricultural Agents, and the Chambers of Commerce, bankers' organizations, etc.

Based on my experience from 1921 to 1925, as to what, in my judgment, is a reasonable estimate for the future—assuming that these same agencies will continue to work in the same way, along the same line: I should say that the results so far point to an ultimate profitable use of 1,500,000 tons on the present cotton acreage, and something like 3,000,000 tons more on the remaining six million crop acres

in this State. The program really points to about that future use.

All our investigations disclose the fact that the use of fertilizers is profitable and necessary for economic produc-[fol. 813] tion of all crops, and on our 8 or 9 million acres of crop lands we might use something like 4,000,000 tons with profit, if it could be bought at a price which would return a profit; at a reasonable price, I should say. (Tes. 1206-1210.)

Cross-examination:

When you undertake to determine the cost of farming or the yield, it is a mighty difficult proposition if it were gone at according to known cost accounting systems.

"Q. What I mean by this is, you can take two farmers, and put them side by side, give them the same amount of land, use the same amount of fertilizer, and the difference in the method of work, one man will make twice as much as the other, won't he?

"A. I do not know what I would say that he might make twice as much, but it has happened that material differences have occurred."

This departure of the negroes from this section started in 1915, and continued in abnormal volume until about 1921.

"Q. And, at that time, when the boll weevil struck this section you would have a man that would have, say 50 acres of land on which he had been making 50 bales of cotton, and when the boll weevil struck him he would make two or three, instead of 50, wouldn't he?

"A. I don't think we ever had any land in this State of any large areas that ever produced a bale of cotton. Of course, we have had some people that did it, but not on a large scale.

"Q. Take half a bale—just cleaned them out, didn't it?

"A. Yes. Our average yield before the boll weevil came was something around 40 per cent of a bale to the acre."

Regardless of the effect of that situation, I believe there is at least one section of Alabama, down around Enterprise, where they built a monument to the boll weevil, because of

the changed conditions of the area. South Georgia,—prior to the coming of the boll weevil, I believe that was a cotton [fol. 814] section. The fact is that South Georgia has first turned to peanuts, and have recently come back to a very large cotton acreage. They have become interested in tobacco, but are growing it on rather a small acreage. I do not know the value of the tobacco that was sold by the farmers of South Georgia this year. I have not any distinct recollection just what it amounted to.

There is a section in Central Georgia that has gone into peach production, and I understand quite profitably so.

I would not say that, in the State of Mississippi, the principal production of cotton in the State of Missisippi is in some nine or ten counties in what is known as the Mississippi Delta, but it is known that their acre production is very large, larger than the rest of the State. They have not heretofore used any fertilizer to any extent much, in that section. I have understood recently that they are turning slowly to the use of fertilizers. Certain kinds of fertlizers.

I do not think I am informed well enough on that to say what might be considered a reasonable price for fertilizer. It has been noted from statistical studies that there is a very decided corelation between the price of cotton and the price of fertilizers, and relatively in the use of fertilizers. When cotton is high, it seems that the price of fertilizer has to some extent followed it, and the farmer has not been prevented from using it by high prices so long as the price of cotton is high. The farmers' psychology depends very largely, sir, on the price of cotton. I should say that any difference, which in the aggregate would increase the farmers' fertilizer bill, would affect him to some extent.

"Q. I was just wondering whether you had in information, and from actual experience as to the effect of a difference in the price of from 25 to 30 cents a ton from year to year as to its actual effect upon the use of fertilizer.

[fol. 815] "A. Only in this way, sir; that I have had an opportunity to study the results obtained by the Alabama Farm Bureau Federation, who were able by some business methods, I believe, to obtain fertilizers a little more cheaper than the outside farmer, and they found that they can, that

their ability to get those fertilizers at a lower price, did encourage the use of it by their members. Now, just what their differences were, I could not answer. I have not their records." (Tes. 1210-14.)

With respect to the acreage that I have shown in the average farm in the various territories: I got the figures from the United States Census Bureau, and they arrived at that by dividing the total acreage by the total number of farms.

As to what has been my observation as to the relative advantage to the farmers in this State in purchasing materials through their cooperative associations, and doing their own mixing on the one hand, as compared with the purchase and use of complete fertilizer on the other: That is the method followed by the farm bureau, and I just stated that they found that they could, or did procure separate ingredients, as we term it, for their members more cheaply than the outside farmer was able to buy through the usual channels of trade.

There is very little hired labor actually used in Alabama, except for peak period when extra help is used. Most of it is farm owners, and farm tenants. We had, in 1924, about 505,000 farm workers in the State, and really, that question can be definitely answered, and I will give it to you. 37 per cent of that number of 505,000 in the United States—that refers to the United States—21.2 per cent in Alabama were farm owners working, 29.3 were tenants working, and 35.5 per cent were home workers—I mean by that, the members of the farmer's family, and 14 per cent were hired laborers.

I think the practice generally followed in which the share tenant farmer, or what you call the cropper is half-and- [fol. 816] half, the farmer, the landlord buys the fertilizers, and out of the crop he pays half and the tenant half. That is my understanding of the general custom for the cropper. Of course, the share tenant or the cash tenant buys his own fertilizer. (Tes. 1214-16.)

Redirect examination:

"By Mr. White:

Mr. McGehee asked you on cross whether one farmer immediately besides another, each using the same amount

of fertilizer, might not differ greatly in the amount of production. While that might be true as to specific instances, would it be true when you applied it on a very general scale?

"A. I might answer that question in two ways, sir; first, that in all these investigations we follow the well known statistical law of averages, which is almost a law of nature; and the second place, that even with the adjoining farmers, it has been found that the boll weevil will eat up a field on one side of the road, and hardly touch that on the other. We don't know, hardly, how to explain that; but it is true."

I was asked a question about the monument at Andalusia, Alabama, to the boll weevil. That was erected at a time when peanuts and peanut oil, and other crops which they took up, were at peak prices. As to whether there has been any change in sentiment as to the propriety thereof, erecting this monument to the boll weevil, since the price for peanuts and similar crops have gone down: I do not think I can answer that latter question except to say that in that immediate section the farmers seemed to have returned to cotton as their first love, in large measure. It is true that the advent of the boll weevil taught all farmers some wholesome lessons as to proper distribution of the crop on their farms, which they have still remembered. I have not seen them lay any flowers on this monument at stated intervals during the year, or specific months.

[fol. 817] "Q. Now, a question was asked you as to the effect of the farmers buying fertilizer by what counsel on the other side referred to as inappreciable difference in the cost to him—I ask you this question: When a farmer is going along, falling behind, that is, his outgo is more than his income, is it or not true that he scans differences in price very closely, and is affected by them?

"A. I think so, sir; and the farmer who uses on a plantation or average size farm approximately 10 tons of fertilizer, would certainly think about $4.00 or $5.00, I think."

It would have some influence on it, I think.

Practically all members of the Farm Bureau so purchasing their fertilizer have increased their use, according to the advice of the experiment station and extension service.

I gave some figures showing the failure of the Alabama and Georgia farmers to receive the normal wage paid for farm labor. The number of farms in Alabama is about 250,000, and that into the figure I gave as $34,000,000.00 would be about $130.00 a year per farmer.

Practically all farmers, operators, are actual workers on the farm. There are some owners who are not farmers, and not so listed in the Census Bureau. The Census Bureau only counts a farmer who is on the farm and operating it.

We have 505,000 workers and 250,000 farms; the average is a little over 2 to the farm. The number of farms in Georgia, my recollection is, about 315,000 farms, and their shortage was $112,000,000.00, which would make somethin' over $300.00 per farmer, lacking in receiving his wage rate. (Tes. 1216-1219.)

(Witness excused.)

[fol. 818] J. H. Alldredge was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is J. H. Alldredge; I am head of the transportation department of the Alabama Public Service Commission. I have had about 15 years traffic experience in various capacities.

I want to say that I endeavored not duplicate unnecessarily testimony that has already been put in the record, and for that reason I discarded some of my exhibits that I had previously made.

There is included in this investigation a 13th section complaints against the revised Alabama intrastate rates on fertilizer, and my testimony will be submitted for the dual purpose of sustaining the Alabama rates in the 13th section case and establishing their reasonableness for general application on interstate traffic throughout the Southeastern Territory.

The Alabama Commission issued a decision on May 26, 1924, prescribing uniform mileage scales of rates for general application throughout the State on intrastate traffic. These rates are in effect today except in that territory in

West Alabama involved in the Meridian Rate Case. A copy of the opinion of the Alabama Commission has already been filed in this record by Witness Drescher as Respondents' Exhibit No. 159, and I shall not burden the record with a duplicate copy.

Agriculture has been in the past and still is the basic industry of the South, and fertilizer is an indispensable asset of the agricultural industry. It is a vital factor in agricultural production. After considering these important facts and all other pertinent facts, both commercial and transportation, surrounding the movement of fertilizer in this section, the Alabama Commission reached the conclusion in the case before it that it would be economically sound, in the general reorganization of our rate structure, of which the [fol. 819] revision of fertilizer rates was a part, to assign to fertilizer a relatively low basis of rates in order that it might move freely and thus contribute something to the welfare of the whole public, including the carriers.

I shall describe some of the main considerations which prompted the Alabama Commission in prescribing the scale of rates shown in its order above referred to before dealing with other phases of this case.

Many difficulties were encountered in trying to harmonize a revised mileage scale of rates in Alabama with the prevailing interstate rates because of the lack of consistency and uniformity in the latter. It was utterly impossible to devise any uniform system of rates for application in Alabama that would dovetail into the hodge-podge interstate adjustment in effect at that time and now. The only thing left for the Alabama Commission to do under the circumstances was to give due consideration to the commercial and transportation characteristics of the commodities designated under the general term of fertilizer, and then take the precedents which the Interstate Commerce Commission itself had set in its formal decisions with respect to this commodity at their face value and follow them as nearly as possible so that the obligations of a State Commission under the Federal law would be discharged. That is what was done by the Alabama Commission.

Fertilizer is a distinctive commodity from both a commercial and transportation standpoint. It has many characteristics that distinguish it from all other commodities

entering into the channels of trade and commerce and entitle it to a relatively low basis of rates. These facts were recognized by the Interstate Commerce Commission in several of its earlier decisions, and they were given proper consideration by the Alabama Commission in its decision. [fol. 820] In Virginia-Carolina Chemical Company vs. St. Louis Southernwestern Railway Company, 16 I. C. C. 49, decided April 12, 1909, involving rates on fertilizer from Shreveport, Louisiana, to certain destinations in Arkansas, the Interstate Commerce Commission said:

"Fertilizer is a low-grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the sense that 'special service' is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions, it is entitled to comparatively low rates."

The foregoing finding was quoted and reaffirmed in Meridian Fertilizer Factory vs. Vicksburg, Shreveport & Pacific Railway Company, et al., 20 I. C. C. 554, decided April 4, 1911. A similar finding was made in the case of Meridian Fertilizer Factory vs. Texas & Pacific Railway Company, et al., 26 I. C. C. 351, decided March 10, 1913, wherein the following language was used:

"In determining what are reasonable rates to be applied to the transportation of fertilizer between the points in question, due weight must be given to the nature of the commodity, the low cost of handling the traffic, and the fact that its free movement is an auxiliary to the production of a larger volume of traffic to the carriers."

As will be noted from reading the opinion of the Alabama Commission in the matter of fertilizer rates, its findings correspond exactly with the findings above quoted.

Fertilizer is used in this section of the country at least solely for the purpose of increasing the yield of agricultural crops, and it does increase the yield materially. On most of the agricultural lands of this State and the Southeast [fol. 821] generally, it is necessary to use fertilizer in order

to make farming a profitable industry. It is necessary to use it, too, from year to year. Fertilizer has been considered for years in this section as absolutely essential in farming operations. Its liberal use is continually being advocated by all thoughtful people, no matter what their occupation may be, because of the vital relation of agriculture to the general welfare of the public. Even at low rates, the burden of transportation falls rather heavily on the movement of fertilizer. Freight must be paid on a heavy tonnage in order to obtain a comparatively small percentage of plant food which is the essential element in fertilizer. The plant food requirements for fertilizer in the different Southeastern States, according to my investigation from reports of the State Departments of Agriculture, range from 10 per cent to 16 per cent of available plant food. The requirements in Alabama are the highest of any of these States. Using a percentage of 16, the highest, a ton of fertilizer would contain 320 pounds of available plant food, but freight must be paid on a full ton. (Tes. 1219-24.)

So far as the distribution of commercial fertilizer for use on the farms is concerned, the movement is seasonal. March is the month of heaviest movement in this section. The movement, therefore, takes place after the period of heaviest movement of farm crops has been accomplished. No special equipment is required to haul fertilizer. It moves in ordinary box cars. Of course, reasonably prompt service in the transportation of fertilizer shipments is necessary, but special service in the sense that we speak of it in connection with the transportation of live-stock and perishables is not required. The movement of fertilizer materials is distributed over a longer period usually than the movement of commercial fertilizer ready for use. Many of the commodities embraced in the fertilizer list move regularly [fol. 822] throughout the year. The extra cost which the carriers have emphasized in the assembling of cars to take care of the heavy movement of fertilizer has some compensation in the heavier loading of trains, especially the local trains that run light so frequently.

The carriers had submitted a scale in Alabama which they stated was based upon the Royster scale, and I may remark right here that they are different from what they now propose; and the shippers submitted a scale which was based

upon a certain percentage relationship to the scale prescribed by the Interstate Commerce Commission in the Memphis-Southwestern Investigation. While this matter was pending before the Alabama Commission, the Interstate Commerce Commission announced its decision in the Blackshear Case, 87 I. C. C. 654, in which the propriety of following the Royster Scale and the Memphis-Southwestern Scale in prescribing rates on fertilizer was considered. The Interstate Commerce Commission in that case definitely and positively rejected the Royster scale and stated that the Memphis-Southwestern scale furnished a fairer guide for determining maximum rates on fertilizer from Blackshear to Florida points than the Royster scale.

The Alabama Commission accepted this decision as definitely rejecting the Royster scale for application in the Southeast, and as fixing the general principles under which the scale should be constructed, that is, by using the scale prescribed in the Memphis-Southwestern Investigation as a maximum guide. This principle was reinforced by the fact, which was commented upon by the Interstate Commerce Commission in several cases, that the level of rates in the Southeast is lower than in the Southwest, and by the further fact that the volume of the fertilizer movement in the Southeast far exceeded the volume of the movement in the Southwest.

[fol. 823] The Alabama Commission was fully mindful of the natural difficulties in the way of adopting a scale of rates for uniform application over the Southeast, but these difficulties are encountered in every attempt to revise the existing rates on any commodity upon a basis of a common level for this entire territory. The judgment of the carriers and the several regulating bodies have differed in the past about rates, and when it is attempted to prescribe a common level, or rates for the whole territory, quite naturally the previous judgments of those responsible for shaping the rate structure must yield to the new conditions.

This was one of the big difficulties that presented itself to the Alabama Commission in arriving at what it considered a just and reasonable scale that might be used for general application in the Southeast. The level of the fertilizer rates started in the Carolinas at the highest point, dropped down slightly in Georgia and Alabama, and still

lower in the Mississippi Valley. The carriers have proposed the highest scale, which would have materially increased the revenue derived from fertilizer traffic if applied in Alabama and the Southeast generally, and what the Alabama Commission did in following the precedents which the Interstate Comemrce Commission had set, was to arrive at a scale which was intermediary between the highest and the lowest ones. I will endeavor to point that out clearly in my exhibits.

Another reason outside of the precedents which the Interstate Commerce Commission itself had fixed in rejecting the Royster scale that likewise suggested to the Alabama Commission that it would not be proper to adopt it was, that when it was originally prescribed, the average loading in that territory of fertilizer was approximately 17 tons a car, while the average loading in Alabama at that time was about 23 tons per car, or about 6 tons higher. Then [fol. 824] again, it originated in a territory whose rate structure had been influenced somewhat by the rate structure in Official Territory, and had taken the form of relatively low class rates and relatively high commodity rates; and we did not have such a rate structure as that in Alabama, or in the heart of the Southeast, and since the decision of the Interstate Commerce Commission in Docket 13494, the rate structure even in the Carolinas will be reorganized by an increase in the class rate structure.

I now offer for the record by Exhibit No. 472, each sheet being separately numbered.

(The statement was thereupon received in evidence and marked "Protestants' Exhibit No. 472, Witness Alldredge.")

Sheet No. 1 represents a comparison between the Alabama Single Line Scale on fertilizer for the standard lines, with the Single Line Scale prescribed in the Memphis-Southwestern Investigation, and the single line scale proposed in this proceeding by the carriers. And, this exhibit also includes the joint line scales. It is not necessary to comment extensively on this sheet, it speaks for itself.

Sheet No. 2 is a graph showing the comparative levels and methods of gradation of the Alabama Single Line Scale and the single line scale prescribed in the Memphis-

Southwestern Investigation, and the single line scale proposed here by the carriers.

Sheet No. 3 analyzes the gradations in the Alabama Single Line Scale and the Memphis-Southwestern Scale, single line, and the carriers' proposed scale. It very clearly shows from that exhibit that the proposed scale of the carriers here is very irregular indeed, and the Memphis-Southwestern scale also has some raggedness in it.

[fol. 825] The method of grading fertilizer scales, in my judgment, is quite an important matter, and I will elaborate on that in a moment. I will do it right now.

The minimum weight under the Alabama Scale is 20 tons, or 40,000 pounds. When the Alabama Commission came to consider that matter, it decided that the time had come when an increase in the minimum weight could properly be made. The minimum weight had been 15 tons in Alabama, and it was 15 tons in the Memphis-Southwestern scale, and the Alabama Commission increased the minimum weight in Alabama to 20 tons. Our information is to the effect that it created very little disturbance in trade channels. Of course when the minimum weight on any commodity is increased there is some disturbance in trade channels, but so far as we have been able to determine, we have watched it rather closely, the trade has accommodated itself to the increased minimum in Alabama very satisfactorily, and we hear no complaint. I might say this, however, that if in this investigation the Interstate Commerce Commission should determine that 20 tons is too high, and prescribe a lower minimum, we might not be able to hold our minimum in Alabama to where it is. The principal disturbance that we found occurred around the border of Alabama where factories just across the line could ship into the State under a 15-ton minimum. If that discrepancy were removed, I could if we could have any complaint at all against the minimum of 20 tons.

Now, as to grading the scale. Fertilizer factories are scattered all over the Southeastern Territory, and are actively competing in common territory in the sale of fertilizer, and if a scale breaks too abruptly, the chances are that one or more of the several factories competing in the same territory will obtain the advantage of the breaking scale, and use it against its competitors. The sale of fertilizer

[fol. 826] seems to have pretty keen competition, and the fertilizer factories are scattered around, so that in almost every spot in the Southeast there is competition between two or more factories.

Another thing, fertilizer goes out to the farmers at a season of the year when they are not busy with their crops, and they can very easily haul the fertilizer for some distance with their wagons at a relatively low cost, and unless the rates for the short hauls are kept within bounds, the wagon competition becomes quite severe. Our investigations show that about 15 per cent of the fertilizer distributed to the farms is now hauled by wagons. Hauling away from the factories and the warehouses by wagons, and even under the Alabama scale there is considerable wagon and truck competition.

I think our accounting as to those figures, I believe that traffic runs up to 15 or 20 miles. (Tes. 1224-1230.)

Now, there is another very important element entering into this question of grading of fertilizer scale, and balancing it, particularly as between the short hauls and the long hauls. There are factories situated along the Gulf Coast and the South Atlantic and North Atlantic Coasts that have a natural advantage in assembling their raw materials over the interior factories. And if a scale is graded in such a way that an artificial preference is given to the long-haul shipper over the short-haul shipper located back in the interior, he can combine that advantage with his natural advantage, and play havoc with the interior man. I do not know of anything that is more important to be considered in the grading of the scale than that fact itself. We endeavored to avoid that. I do not say that the short-haul shipper should have any advantage over the long-haul shipper; I think that both should have justice, but it is quite important to see that the scale is not unbalanced as between the short hauls and the long hauls.

[fol. 827] I found in an investigation of the truck competition in Alabama under the revised Alabama scales, that one fertilizer factory had employed a truck, and made a contract with that truck to deliver fertilizer from its factory at a lower charge than the Alabama scale produced for the short hauls, and quite a volume of it was distributed by that fertilizer factory in that manner.

Now, Sheet No. 4 compares the first three columns, eliminating the distance column, the ton mile earnings under the Alabama scale, the Memphis-Southwestern scale, and the carriers' proposed scale for single line application; and the last three columns compare the joint-haul arbitraries or differentials. Averages are shown at the bottom of those columns, which indicate fairly well the relative levels of those different scales. In the Royster Case, the Interstate Commerce Commission prescribed a joint-line arbitrary of 20 cents a ton, and in the Memphis-Southwestern Case it likewise prescribed a joint-line arbitrary of 20 cents a ton, except in one place within the 250-mile block, where it is 10 cents. I presume that is a typographical error, but the Alabama Commission adopted the principle of abating the differential. It began at 30 cents a ton, and applied that up to 160 miles, then 20 cents a ton up to 360, then 10 cents a ton up to 500, and faded it out. Now, in the carriers' proposed scale they have evidently taken this joint-line differential as they appear now in the scale, since they have gone through those horizontal increases and reductions, and then just vary from 34 cents to 22 cents all through the scale from beginning to end, which makes a very ragged scale, but it is what the Commission prescribed in the Goldsboro Case.

Now, the average differential in the Alabama Scale up to 520 miles is 22 cents, and the Memphis-Southwestern 20, [Vol. 828] and in the carriers' proposed scale 29 cents. I presume it is understood here that Mr. Bosley has extended the Alabama scale up to 1,000 miles, and has proposed it here in this proceeding, to which we are entirely agreeable. It would have to be extended, of course, if it is applied in the Southeast.

Now, Sheet No. 5 shows a comparison between the minimum per car earnings under the Alabama Scale, the Memphis-Southwestern scale and the carriers' proposed scale. It will be seen that minimum per car earnings which are assured the carriers under the Alabama scale as a general rule exceed the minimum per car earnings assured them under the other two scales, and it also shows that it assures them of a minimum per car earning in Alabama for the first five miles of $16.00.

Sheet No. 6 shows the percentage relationship of the Alabama scale to the Memphis-Southwestern. Now, the Alabama Commission did not base its scale upon any definite percentage relationship to the Memphis-Southwestern scale. It used that as the Interstate Commerce Commission outlined in the Blackshear case, merely as a maximum guide, but in grading the scale it took cognizance of the conditions obtaining in that territory and graded it differently, but this sheet shows that under the single line scale the Alabama scale averages 87.3 per cent of the Memphis-Southwestern scale, and the joint-line scale in Alabama averages 89.1 of the joint-line scale in the Southwest.

Now, I consider Sheet No. 7 an important exhibit. Our friends the carriers have used some rather forceful language in describing the low measure of the Alabama scale in this proceeding, and this sheet shows how it compares with the normal interstate scales of three of the largest trunk line railroads operating in the South. The Illinois Central Railroad, the Louisville & Nashville Railroad, and the Mobile & Ohio Railroad. Those are their normal inter-[fol. 829] state scales, some of them have been in effect for years in this territory. And, it will be noted there that although there is quite a difference in the graduations in those scales—all of them differing from one another—yet the Alabama scale averages up to the level of those three scales. Now, Mr. Drescher, in the 13th section case, took the rates of the Louisville & Nashville made under this scale and compared them with the rates under the Alabama Scale for the short distances. Now, it is readily apparent that I could makee a similar comparison for the long distances, and show the very reverse of what he shows, and I do make some of those comparisons. His scale is graded differently from the Alabama scale, but there is not much difference in the average level of those scales.

It will also be seen that the standard line scale in Alabama is really higher than the interstate scale of the Illinois Central Railroad, which runs into Alabama, but the Alabama Commission has for years, ever since the Illinois Central entered Alabama, treated it as a short line, and allowed it to charge higher rates than the standard lines, and in this case it accorded the Illinois Central Railroad

the short line basis, which, on local traffic, is 20 per cent higher than the standard scale, and on joint-line business between standard lines and short lines, 10 per cent higher, and yet, in the face of that fact, the Illinois Central Railroad is a party to the 13th Section Case before the Alabama Commission.

I have extended those comparisons there to the ton-mile revenues and the car-mile revenues, and I think that exhibit clearly shows that the Alabama scale is as high as the average of those three interstate scales.

Now, sheet No. 8 takes the average haul on all tonnage in the Southern District for 1923, which is 214 millions, and compares it—and the average revenue per ton on all freight for this distance revenue per ton mile and per car mile—[fol. 830] and compares that with the revenue production under the Alabama and Memphis-Southwestern, and carriers' proposed scales for that distance. Now, in the second table on that exhibit it makes that same comparison, but substituting the revenue production of those different fertilizer scales under what we have determined by our investigation to be the average outbound haul on fertilizer in Alabama, 55 miles. (Tes. 1231-35.)

There is an error in that exhibit there and I want to point it out. In compiling those car-mile revenues over there we used car loadings of 29.6 tons per car, which is the average loading of carload traffic. We ought to have used the average loading on fertilizer in the Southeast, which is 23.7 tons. That will affect the car mile revenues there to that extent.

That error is on Sheet No. 8, in compiling those car-mile revenues there, we used on fertilizer an average loading of 29.6 tons, and we ought to have used the actual average in the Southeast of 23.7. As a matter of fact, that 29.6 tons average loading there would not be far from what the average loading is of fertilizer in Alabama, because it is higher than in the Southeast generally.

Sheet No. 9 reproduces some revenue statistics published by the Bureau of Railway Economics. It is not necessary to comment upon that except to call attention to the earnings of the carriers in the Southern District as compared to the United States as a whole, and also the fact that it

is undoubtedly as favorable to the carriers' standpoint as they could make it, because they put it out. That is figured on book investment.

After the Commission established a tentative valuation of the carriers, they put out these statistics based upon that tentative valuation for a while, but they have changed it, and they are basing it on the book investment. There [fol. 831] would be some difference if it were based upon the tentative valuation, plus the additions and betterments.

Sheet No. 10 represents a comparison of the Alabama scale on fertilizer with intrastate scales of other States in the Southeast.

"Q. Your heading says 'Fertilizer and fertilizer material.' You don't mean that the column under the heading Florida represents both the rates on fertilizer and fertilizer materials, do you?

"A. No, I guess that ought to have been explained in detail right here, Mr. Tench. I don't think that is true of Georgia either. I think they have a rate on fertilizer materials somewhat lower than the fertilizer rate. This really ought to read fertilizer."

The Commission will notice there is quite a variety of intrastate rates, but I don't think there is any more variety of intrastate rates on fertilizer in the Southeast than there is of interstate rates. There are many varieties of those rates in both classes of traffic.

Now, Sheet No. 11, of two pages, compares the Alabama scale of rates on fertilizer with various specific rates on fertilizer in Southern Territory, and at the conclusion of the exhibit it indicates the changes which the Alabama scale would bring about in those rates. Those changes are totalled under each head line point. It will be noticed that there are just about as many increases as there are decreases when the Alabama scale is applied to those specific rates.

Now, Sheet No. 12 compares certain specific rates which were in effect in Alabama when the Alabama scale went into effect, with the rates produced under that scale. We wanted to show the Commission that the Alabama scale did not produce reductions in all instances in Alabama. There

were various specific rates that were increased, some of them carrying important tonnage.

[fol. 832] Now, Sheet No. 13 compares the present rates on imported fertilizer materials from Gulf and South Atlantic Ports to various important Southeastern destinations with the rates that would be produced by the rigid application of the Alabama scale. I think you will find that numerous increases would be made if the Alabama scale were applied rigidly. Of course, if the ports are equalized, it won't be possible to apply it rigidly to all the territory.

In Sheet 15 it compares the specific interstate rates on cottonseed meal in carloads with present Alabama intrastate scale for the same distances. Those rates apply from those head line points shown in the margin. At the bottom of the comparison under each head line point is shown the changes that the Alabama scale would bring about.

Sheet No. 16 makes a similar comparison of cottonseed hulls from certain important points to various destinations. That comparison is continued for four pages, and results are shown at the bottom of the comparison under each head line point.

No, Sheet No. 17 compares the Alabama scale on fertilizer, which covers cottonseed meal, with certain specific rates that were in effect on the Alabama intrastate traffic when that scale went into effect, and that shows also what changes were brought about by the application of the Alabama scale in existing rates.

Sheet No. 18 was correct when we made it up. It shows a comparison of certain interstate rates around across the border of Alabama and back into Alabama with the Alabama scale for the short line distance, but the carriers discovered these discrepancies, and they have been corrected just as far as they could, and they have about corrected all of them, that is to say, they have increased those rates up to the Alabama scale, but I left the comparison in here to show that the Alabama scale did not reduce all the rates [fol. 833] there were.

Now, Mr. Drescher was kind enough to give you some comparisons between interstate rates along his line on fertilizer with the Alabama intrastate rates, in support of his 13th Section allegations.

Sheet No. 19 gives you a comparison from our standpoint. It is tit for tat on that proposition. We can use his long-haul rates and he can use our short-haul rates, and both produce similar results.

Sheet 20 makes certain comparisons of minimum carload earnings on fertilizer under the Alabama scale with rates on sewer pipe and commodities in that list, face brick, commodities in that list, and lime.

Now, I want to offer my Exhibit No. 473.

(The statement was thereupon received in evidence and marked "Protestants' Exhibit No. 473, Witness Alldredge.") (Tes. 1235-40.)

This is a diagram, and it reproduces from the report of the Commission in I. & S. 1303. The Commission endeavored to indicate for one thing the comparative rate level in the Southeast and in the Southwest, of the Mississippi Valley Territory, and also as to what level would be necessary to preserve the carriers' revenue in the Fourth Section revision, over there, and what the carriers proposed to do in order to establish a common level between the Southeast and the Mississippi Valley, and the Southwest.

I am going to follow that now with my Exhibit 474, which compares carriers' proposed scale in this investigation, the Alabama scale extended, and Mr. Bosley has extended it; the suspended rates in I. & S. 1303, which were designed to bring the level of the Mississippi Valley up to a common level with the Southeast, as shown on my Exhibit 473, and the present rates as a result of the Commission's decision in I. & S. 1303.

[fol. 834] (The statement was thereupon received in evidence and marked "Protestants' Exhibit No. 474, Witness Alldredge.")

That indicates that the Alabama scale, if applied in the Mississippi Valley, would increase the level of the existing rates over there, and yet almost if not entirely, bring the level up to what the carriers originally proposed to do in I. & S. 1303. It is quite difficult to apply mileage scale with those group rates in effect in the Mississippi Valley and determine accurately the relative levels of the rates, but I

have endeavored to indicate in a general way just what effect the Alabama scale would have.

I might say this, that it would not increase materially the Mississippi intrastate rates. I might go further and say inasmuch as our friend, Mr. Hayward has appeared here, that those Mississippi intrastate rates also haul mixed feed. I think they can ship 70 miles over there in Mississippi mixed feed in less than cardoad quantities, at $1.20 a ton.

Now, I would like to offer my Exhibit 475.

(The statement was thereupon received in evidence and marked "Protestants' Exhibit No. 475, Witness Alldredge.")

The carriers, at the hearing in Atlanta, made reference to the changes which Examiner Disque had proposed to make in the fertilizer rates prescribed in the Memphis-Southwestern Investigation, and I have attempted to analyze the situation and show the effect of his proposal. He proposed to put fertilizer on the class basis over there, and there was no differential between single line hauls and joint line hauls in his class scale, and that was one of the biggest changes that he proposed to make.

I think that is all. (Tes. 1240-42.)

Cross-Examination:

As to whether one of the considerations that caused the Alabama Commission to fix low rates in its scale it pre- [fol. 835] scribed for distances around 15 and 20 miles, it was desired to arrive at a figure that would enable the carriers to compete with the truck competition: I might answer that this way; that one element which is considered was the desire to enable the carriers to maintain their short-haul business. I might give you some reasons for that if you want them. Well, the loss of short haul business by the cariers is creating quite a problem for the regulatory bodies, as they lose that short haul business, then they curtail the service, and that causes them to lose some more, and the tendency is to curtail again, and it starts a wheel within a wheel, and creates all sorts of complaints from those local communities that are very difficult to deal with.

Of course, if you start a scale low and they have no uniform gradation beyond that, it is true that makes the whole scale relatively lower than if you were to ignore that short-haul competition and started your short haul distances at a higher level. I don't think we started it at an unreasonably low figure; of course we may differ about that.

I think the principle difference between the scale prescribed by the Alabama Commission, and the scale at present maintained by the Louisville & Nashville, as is indicated in Sheet 7, is that the Alabama Commission's scale for distances up to 200 miles is materially lower than the Louisville & Nashville's scale, whereas for distances in excess of 200 miles the reverse is true. It is a fact that the preponderance of the outbound movement from the fertilizer factories is for short hauls, the preponderence of the inbound movement on the materials is for the long hauls. Now, just what the relative volume of those two movements is, I really don't know.

[fol. 836] I have not made any particular study of the rates in Southwestern Territory, west of the Mississippi River, as they were prior to the adoption of the 9702 scale. I am not familiar with the conditions under which those rates may have been established in that section. We just accepted the Commission's report for its face value; did not attempt to go behind it. It would not have done us any good if we had. That investigation was a general investigation of all rates, and was not confined at all to fertilizer rates. It is also true that the scale prescribed by the Commission in that case on fertilizer, represented largely an attempt to remove existing discrepancies and inconsistencies in the rates that existed in that territory, and it is also true of the Royster rates, I think. As to whether it is not true in the 9702 case, that the Interstate Commerce Commission was rather seeking to strike a level of rates in that territory based upon the rates as they then existed, than to determine what might perhaps under other conditions be considered a reasonable per se level of fertilizer rates for that section: It might be permissible to form that conclusion if you had only the Commission's report in the Memphis-Southwestern Case confronting you, but as to fertilizer, we had before the Alabama Commission turned loose its decision, the subsequent decision of

the Interstate Commerce Commission in the Blackshear Case, and I don't see how we could have done otherwise than what we did, if we wanted to follow the Interstate Commerce Commission's precedent.

Concerning if it is a fact that both in the Blackshear Case and in the action of our Commission in adopting the 9702 scale, that scale was simply adopted and followed—that is, the 9702 scale: The Interstate Commerce Commission followed it in the Blackshear Case, that is true, but we followed it only as a maximum guide in our case. We did not adopt the same method of gradation as they did over there. [fol. 837] I might say this too, Mr. Gwathmey, that the Alabama Commission had quite a voluminous record before it, and it knew what the measure of these interstate scales was here, of the trunk line railroads in this territory, and I don't think we missed the general level of those very far. I agree that in fixing freight rates consideration should be given to both cost of service and value of service. If you give consideration to the cost of service alone, the freight rates on every commodity would yield a fair return to the operation cost of service, and also a fair return to the value, or investment of property used in that service. That is, if you considered cost alone. Now, if you are also going to take into consideration the value of the service, which really means value of the commodity transported, it would follow that a reasonable freight rate on a high grade article will be more than the normal profit on the value of the property used, and that a reasonable return on the rate for a low grade article might not produce hardly more than out of pocket expenses. I don't think you can find any escape from that logical conclusion.

There are some commodities that ought to have lower rates than fertilizer. It is not at the bottom of the scale, but I think it is below the average. I would put it below sand and gravel, and slag and crushed stone, and commodities of that class. Perhaps coal. I don't know about lime; there is not so much difference there.

In fixing the level of our rates on fertilizer, in fixing this scale, we took into consideration that matter of where this scale fitted into comparisons with the rates on other low grade commodities. I think it is about right; and I think we had not only ample precedent from your Commission,

but we had ample precedent from what our trunk line carriers down here in this territory had been doing for years. (Tes. 1242-48.)

[fol. 838] I have got a comparison in here on face brick I think these rates are higher in cents per 100 pounds. But the carload minimum, of course, would be higher on the brick.

In answer to Commissioner Eastman's question about what we would take into consideration in making our rates on fertilizer in the State of Alabama, the Alabama Commission put out a rather complete opinion, giving its reasons. Our reasons, and the method that we used to the extent that it is stated in that report, is correct, and can be relied upon. That report shows that to a very large extent what we did was the Interstate Commerce Commission, having based its Blackshear Case on a situation West of the River, we took as our guide the scale fixed by the Commission in the Blackshear Case, reduced and made lower to the extent that we thought it ought to be, by the difference in the transportation conditions as we conceived them to be over here as compared with West of the River. I think that the United States Supreme Court, in the Wisconsin Case, told us that is what we ought to do, and we did it to the best of our ability. But now, that was not the only controlling element in the case. We had ample evidence there to support the correctness of that scale after it had been arrived at on that basis. In our judgment, of course if following that basis would have produced a scale that the record would not support, we would have had to discard it. We gave our basis in there. (Tes. 1248-50.)

I read several times the Commission's decision in Docket 9702 with specific reference to fertilizer rates. I recall that the Commission referred to and compared the Royster scale with the rates that were proposed by the various parties in the Southwestern Case, including the Meridian scale, which has been referred to.

The Commission undoubtedly specifically rejected the Royster scale as a measure of reasonable rates in the [fol. 839] Southwestern Territory, it did not follow it.

I think the shippers predicated their case on the Southwestern Case. I think the case was submitted before the

decision in the Blackshear Case was announced. We did not arrive at a conclusion until after the decision in the Blackshear Case, as well as I remember. Whatever influence the Blackshear Case may have had upon the Alabama Commission, it could not have affected the shippers in Alabama, who were advocating the lower scale in Alabama than the Southwestern Scale would have produced; they had submitted their case before.

In the method of making rates, we took into consideration the difference in transportation conditions in the Southwest as compared with this territory. I stated by reason of those differences I thought that the rates in this territory ought to be somewhat lower.

"Q. Now, why is it not a proper thing, if you are going to make rates that way, to do the same thing as compared with a territory where the density of traffic is very much greater than in the Southeast? I refer to Central Freight Association Territory, for instance. In other words, do you think this, Mr. Alldredge, that, regardless of the difference in the commodities, of the differences in conditions, that it is a proper way to make rates in this territory, just go over in some other territory where conditions are entirely different, and just take that as your sole standard in measuring rates down here. In other words, pre-judge all of the cases in the Southeast before they are ever tried, by something that was done a year ago in some other territory? Do you approve that way of making rates?

"A. No, I don't think that would be a proper way to make rates.

"Q. I knew you did not.

"A. But, I will tell you why we did not use the C. F. A. [fol. 840] Territory rates as a guide. Their scheme of rates was so totally different from ours, that we cannot make use of comparisons to much advantage, and would not know what to do with it. Their schemes are so totally different that we could not utilize comparisons.

"Q. That is true in the Southwestern Territory on certain commodities?

"A. It is more comparable with our section than any other. I will say this, that if there is any commodity moving, in my judgment, on which the Southeast is entitled

to a lower rate than the Southwest, it is fertilizer rates. It consumes, ships and transports four or five times as much as they do over there, and if there is any commodity on which we are entitled to any different rates, in my opinion it is fertilizer."

I do not recollect whether or not the rates in the Southwest prior to the 9702 proceeding were materially lower than the Royster scale of rates.

"By Mr. Caskie:

"Q. If that was true, is there anything peculiar about that to warrant all of the fertilizer rates south of the Carolina territory, clean around to Southwestern territory, including Southwestern Territory, lower than the Royster scale?

"A. I know that is true, down to the border of the Southwestern Territory."

The carriers have introduced any number of exhibits in this proceeding comparing coal, crushed stone, sand and gravel, with fertilizer rates. As to it being a fact that a great per cent, if not practically all of those commodities, are loaded in open top equipment, and if that equipment does not move to loading point empty: That is generally true of coal and sand and gravel, slag, and commodities of that kind, and crushed stone. (Tes. 1250-54.)

(Witness excused.)

[fol. 841] M. L. Cooper was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is M. L. Cooper; my occupation is that of accounting. I am employed by the Alabama Public Service Commission as auditor. I have been so employed since September 1st, last year.

I was previously employed as follows: Car accountant, G. F. & A. Railway; chief of accounting department, Naval Air Station, Pensacola, Florida; accountant for Loveman

Joseph & Loeb, Birmingham, Alabama; chief accountant and auditor, Mathews Electric Company, Birmingham, Alabama; compiled U. S. Coal Commission Report for Tennessee Coal, Iron & Railroad Company at their Docna Mines, Birmingham, Alabama; chief accountant for Selma Creamery & Ice Company; my total accounting experiences extending back 12 years.

I have been instructed by the Alabama Public Service Commission to investigate and compile certain statistics in regard to the fertilizer movement in Alabama. I here submit Alabama Public Service Commission's Exhibit No. 476.

(The statement was thereupon received in evidence and marked "Protestants' Exhibit No. 476, Witness Cooper.")

Exhibit No. 476, supporting my testimony in this case, which I have personally compiled and certify to the correctness thereof. Such exhibit consists of sheets numbered 1 to 10, inclusive. I will now take up in order each sheet of this exhibit and explain the same.

Sheet 1 is a map. In my investigation I found it necessary to visit certain fertilizer plants located throughout the State of Alabama, from which I could obtain data that would be most fairly representative of the fertilizer movement in Alabama, and in order that the Commission might see at a glance the sources from which such figures [fol. 842] were obtained and the location of each source, I prepared Sheet 1 of this exhibit, showing thereon the geographical location of the plants I visited and obtained data from. Sheet 1 also shows the railroads serving such plants. As shown by this sheet, the plants I visited are located in all sections of the State, some of them are among the larger plants of the State and some of them are among the smallest plants, but taking those visited as a whole, they are in my judgment fairly representative of the fertilizer industry in this State.

Sheet 2, Table 1: In this compilation I have used abstracts from statistics prepared by the Interstate Commerce Commission. The data in Table 1 of this sheet was obtained from the "Preliminary Abstract of Statistics of Common Carriers for the year 1923," issued by the Interstate Commerce Commission.

This table indicates, by districts, i. e., Eastern, Southern, and Western, the miles of road operated, tons of freight carried, and ton miles.

The Pocahontas District, the classification is made as per statistics of the I. C. C., and I understand that includes the Pocahontas District. I understand in the Interstate Commerce Commission's statistics it is included in the Southern District, although these quotations from the Interstate Commerce Commission statistics.

Here, I want to add to my testimony, that the divisions of roads into the Eastern, Southern, and Western Districts throughout my testimony is the same as my other divisions, made by the Interstate Commerce Commission. The initials "I. C. C." used throughout my testimony refer to and stand for the Interstate Commerce Commission.

I am not sure that the Pocahontas District is included in the South; it is my understanding it is included in the North.

"Q. Why I asked, in fixing rates in 13494, I understood it was put in the Eastern Territory.

"A. I am not sure of that, but from these statistics, ex-

[fol. 843] act quotations from the I. C. C."

In other words, publications from which I gathered this data set out certain districts as Eastern, Southern, and Western Districts, and I have used in my compilations the figures as applied in those publications for these several districts.

Sheet 2; Table 2 indicates the fertilizer tonnage carried and per cent of fertilizer revenue total revenue. This latter figure for the Southern District the Commission will notice is 1.3 per cent. In other words, I wish to show that the total revenue derived from fertilizer carried by Class I roads in the Southern District is equal to 1.3 per cent of the total revenue derived from all freight carried in this district as compared to .3 per cent for Eastern District and .1 per cent for Western District.

That includes fertilizer materials; all fertilizer. (Tes. 1254-1258.)

"A. Yes, the comparison would be there."

In Table 7 comparison is made between the total revenue and revenue per ton on fertilizer; and total revenue and revenue per ton on all commodities. Note that the average [fol. 846] revenue per ton on fertilizer, admittedly a low grade commodity, is approximately the same in the Southern District as the average revenue per ton on all commodities, including high grade commodities, in this District, while in the Eastern and Western Districts the average revenue on fertilizer is much lower than that on all commodities. In other words, the average revenue per ton on fertilizer in the Southern District is 99.135 per cent. of the average revenue per ton on all commodities in comparison with 90.189 per cent in the Eastern District and 74.916 per cent in the Western District.

The figures as to total revenue shown in this table were obtained from Statement No. 24187, File 18-C-9, published by the I. C. C., giving estimated freight revenue by classes of commodities; Class I roads for calendar year 1923; while the revenue per ton figures were arrived at by dividing these figures by the appropriate number of tons, which tonnage was obtained from the same source. The figures as to percentages were arrived at by calculation based on figures obtained from the source named.

The Commission will note that in Table 8 is shown the average hauls, in miles, and the average weights per car on all movements of fertilizer, interstate and intrastate in Alabama, separated as to inbound and outbound movement.

In Column 2 of this table are shown averages taken from strictly fertilizer and fertilizer materials moving within the Southeastern Territory, except imports, while in Column 3 are shown averages taken from the movement of all fertilizer ingredients, regardless of point of origin.

The average ton haul of inbound fertilizer in Alabama during 1923 is only 5.8 miles shorter than the average ton haul of all commodities in the entire Southern District, as shown in Table 5, while the average weight per car of [fol. 847] fertilizer inbound, was heavier in Alabama in 1923 by 7.84 tons than fertilizer originated on Class I roads in the entire Southern District, as shown in Table 4; and even the outbound movement in Alabama during 1923 shows a

heavier average weight per car than the average weight per car on fertilizer originating in the entire Southern District by 4.13 tons.

Figures in Table 8 were compiled by me from the records of the plants designated on Sheet 1 of this exhibit.

On Sheet 4, Table 9, a comparison is made of the interstate and intrastate movement of fertilizer to and from the plants located in Alabama, designated on Sheet 1 of this exhibit. It will be noted in Section A of this table that of the total railroad movement inbound and outbound of strictly fertilizer and fertilizer materials in the Southeast, only 20.78 moves interstate, and of the outbound movement only 8.36 per cent (as shown in Table 10) moves interstate; while in Section B of table 9, which includes the movement inbound and outbound of all fertilizer and fertilizer ingredients, regardless of tariff classification and point of origin, only 47.95 per cent moves interstate.

Figures in Table 9 were compiled by me from the books and records of those fertilizer plants designated on Sheet 1 of this exhibit.

In Table 10 is made comparison of the percentages of railroad movement interstate and intrastate from those fertilizer plants located in Alabama designated on Sheet 1 of this exhibit, to the total railroad movement and also to the total distribution of fertilizer by such plants, including their wagon, boat, and other deliveries. It will be noted that during 1923 the wagon deliveries amounted to 15.57 per cent of the total distribution, while the boat and other deliveries were 9.56 per cent, leaving only 68.41 per cent for [fol. 848] intrastate railroad movement and 6.46 per cent for interstate railroad movement.

This statement shows that the railroad movement intrastate is 91.37 per cent of the entire railroad movement intra and interstate. This table further shows that the combined wagon and boat movement of such fertilizer is slightly in excess of 25 per cent of the total distribution.

Figures in this table were compiled by me from the books and records of those fertilizer plants designated on Sheet 1 of the exhibit.

Sheet 5, Table 11: Of the railroad movement from such plants, only 2.14 per cent moved less carload, while 97.86

per cent moved carload; and this carload movement is 73.27 per cent of their total distribution.

Figures in this table were compiled by me from the same source as those set out in Table 10.

Special attention is called to the figures in Table 12, which show that of the entire carload distribution, comprising 73.27 per cent of the total distribution from said plants, as set out in Table 11, 2,722 cars out of 3,355 moving, or a percentage of 81 per cent, carried 20 tons and over. 20 tons is the minimum weight per car under the present tariff of the Alabama Public Service Commission, which went into effect July 25, 1924. In other words, before such tariff went into effect 81 per cent of the cars moving from these plants carried loads of 20 tons and over.

The figures in Table 12 were compiled by me from the same source as those set out in Table 10. (Tes. 1261-66.)

In Table 13 is shown the percentage of acid phosphate tonnage to the total tonnage of fertilizer distributed. In other words, of all the fertilizer distributed by said plants, there was 71.20 per cent of same either distributed as acid phosphate proper or used as an ingredient in the mixed fertilizer.

[fol. 849] Of the outbound railroad movement from these plants, approximately 53 per cent of same moves as strictly acid phosphate, while the average sales price per ton of all fertilizers distributed by these plants, including acid phosphate, was, for 1921, $21.02; 1922, $19.66; 1923, $21.23, not including prepaid freight thereon. These average sales prices per ton of all fertilizers, including acid phosphate, should be compared with the average sales price per ton of acid phosphate shown in Table 14, for 1921, $17.54; 1922, $14.41; 1923, $15.78, and these prices on acid phosphate included freight prepaid thereon.

The figures in Table 13 were compiled by me from the same source as those set out in Table 10.

It will be noticed on Sheet 6, Table 14, that the average sales price of acid phosphate sold by these plants dropped from $25.27 per ton in 1920 to $17.54 per ton in 1921, and $14.41 per ton in 1922, and then went back to $15.78 per ton in 1923 but again dropped to $13.55 per ton in 1924. All of these prices, as before mentioned, include prepaid freight thereon.

The Commission will also notice that in my note to this table I explain that the tonnage of fertilizer distributed by the plants I visited in compiling this exhibit represents about 25 per cent of the total tonnage of fertilizer distributed in Alabama during 1923, and these plants being geographically located as shown on Sheet 1 of this Exhibit, the tables compiled in this exhibit should be fairly representative of the total figures for this State.

Figures in Table 14 compiled by me from the records of the fertilizer plants designated on Sheet 1 of this exhibit.

In Table 15 I have brought out in comparison by districts for the year 1923 the total freight revenue, revenue [fol. 850] per ton of freight, revenue per ton mile, freight revenue per mile of road, ton miles per train mile, ton miles per loaded car mile, and freight density, all for Class I roads.

I wish to call special attention to the column headed "Ton Miles per Loaded Car Mile," where it will be noted the figure 26.76 represents the Southern District, while the average weight per car of fertilizer moving to and from plants in Alabama as shown in Table 8 is 30.54 tons, showing that the ton miles per loaded car mile of the fertilizer movement to and from plants in Alabama would be considerably more than on the movement of all commodities moving in the entire Southern District.

The figures in Table 15 were obtained from "A Preliminary Abtract of Statistics of Common Carriers for the Year Ended December 31, 1923," published by the I. C. C. The figures for freight density were obtained from "Statement No. 24351, File No. 77-A-5," published by the Bureau of Statistics of the I. C. C.

Freight revenue per mile of road was obtained by dividing the number of miles operated in each district shown in Table 1 into the freight revenue—shown in Table 15.

Table 16 gives in comparative form, by districts for the year 1923, operating expenses, taxes, net income and total revenue, per ton mile, from Class I roads. It should be observed that the roads in the Southern District operate at a lower expense, and their taxes in this district are lower than in any other district, while their net income per ton mile is greater than in the Eastern District.

Figures in this table obtained from Sheets 16 to 19, inclusive, of "Statement No. 24351, File 77-A-5," published by the Bureau of Statistics of the I. C. C.

On Sheet 7, Table 17 is a chart showing the price trend of spot acid phosphate in New York from January, 1921, [fol. 851] through December, 1923, heavy lines indicating the highest prices at all times, and dotted lines indicating the lowest prices at all times.

Special attention is called to the fact that the highest price of acid phosphate during the last six months of 1923 was $8.50 per ton, or 54 per cent lower than in January, 1921, which confirms the price reductions in Alabama as shown in Table 14.

The prices upon which this chart was constructed were obtained from the American Fertilizer Handbook of 1924.

Sheet 8, Table 18. This chart makes comparison between (1913) pre-war prices and those of 1924, of fertilizer materials and 14 other commodities. Index 100 represents 1913 prices.

From this chart it will be observed that even though fertilizer materials did go up during the war period, they have gone back to almost their pre-war price levels, while the other commodities shown on this chart still remain at extremely high price levels. In other words, fertilizer material was only 4.4 per cent higher in December, 1924, than during 1913, while iron and steel, the commodity that is next nearest its 1913 price level in December, 1924, was still 42.8 per cent higher than it was in 1913; and house furnishings were still 137.7 per cent higher than in 1913. I did not have the figures for 1925.

In 1923, as well as I remember, fertilizer was one and a fraction per cent higher. In 1924, for the same month, it was 4 and a fraction cents higher, I think, of what it was in 1925, I could not say, I have not seen the statistics on it.

The price levels upon which this chart was constructed were obtained from "Wholesale Prices of Commodities for 1924," published by the U. S. Department of Labor.

On Sheet 9, Table 19 gives for 1923 a comparison by districts of maintenance of way expenses of Class I roads, [fol. 852] with depreciation shown separately. Attention is called to such figures for the Southern District. (Tes. 1266-70.)

It will be noted that the maintenance of way expenses for the Southern District is only 138 million dollars, or about 40 per cent of the 345 million dollars expenses of the Eastern District and about 43 per cent of the 321 million dollars expenses of the Western District, while the depreciation charged by carriers in the Southern District amounts to over 5 million dollars, which is almost three times the amount of the depreciation as charged by the carriers in the Eastern District and almost five times the amount of depreciation as charged by carriers in the Western District.

The table further shows that the carriers' retirement of equipment in the Southern District is entirly out of proportion as compared to the other Districts, for 1923. In other words, the retirement of equipment in the Southern District amounted to about 5.8 per cent as much as other maintenance of equipment expenses, not including depreciation, in comparison to 3.1 per cent in the Eastern District and 1.7 per cent in the Western District.

Figures in this table were compiled from data obtained from pages 7 to 9, inclusive, of "A Preliminary Abstract of Statistics of Common Carriers for the Year Ended December 31, 1923," published by the I. C. C.

In Table 20 I have reduced the figures in Table 19 to a unit basis of per mile of track operated in order that the Commission can see at a glance the facts which I endeavored to bring out in Table 19. In Table 20 it will be seen that the carriers in the Southern District during 1923 charged depreciation of maintenance of way and structures with $80.00 per mile of track operated in comparison with $15.00 charged by carriers in the Eastern District, and [fol. 853] $6.00 per mile charged by carriers in the Western District, and the equipment retirements in the Southern District during 1923 amounted to $172.00 per mile in comparison to $158.00 per mile in the Eastern District and $38.00 per mile in the Western District.

The figures of miles operated were obtained from "A Preliminary Abstract of Statistics of Common Carriers for the Year Ended December 31, 1923," published by the I. C. C.

Sheet 10: In Table 21 I have shown the net railway operating income of Class I roads, in comparative form, by districts, and for the years 1920 to 1923, inclusive, 1920

being for only 4 months, such 4 months being those when the roads were under private operation; then I have shown in comparative form and by districts their investment as of December 31, of each of such years, in road and equipment and improvements on leased railway property, and from these figures I have determined their rate of return, which is shown at the bottom of Table 21 in comparative form by districts for the years 1920 through 1923, 1920 being for only 4 months.

The rate of return shown here is, of course, not the rate of return upon the fair value of their properties, as such valuations were not obtainable, at this time, but is the rate of return on the investment in road and equipment and improvements on leased railway property at the values shown on the books of the carriers and given here for the purpose only of showing the trend of the carriers' rate of return since 1920.

If, in the judgment of the Commission, book values of the carriers are generally substantially in excess of their fair value for rate making purposes, then the figures shown in Table 21 would indicate that the carriers in the Southern District are now receiving a net return substantially in excess of that which has been prescribed by the Commission, in the figure of 5.75 per cent.

[fol. 854] The figures in Table 21 were obtained from "Statistics of Railways in the United States," published by the I. C. C., for the years 1920, 1921, and 1922, and from "A Preliminary Abstract of Statistics of Common Carriers for the Year Ending December 31, 1923," published by the I. C. C.

The rates of return were compiled by me from the income and investment figures shown in this table.

In sitting here this morning I have compiled some more figures that I think will be helpful.

I have compared the current assets and the current liabilities of the carriers in the Eastern District, Southern District and Western District, and I find that the assets—that is, the liabilities of the carriers in the Southern District equal nearly 53 per cent of their assets—that is, the current assets and current liabilities—while, in the Eastern District, the figure is 73 per cent, and in the Western District 76 per cent, showing that the current assets as

compared with the current liabilities, in other words, working conditions of the railroads in the Southern District as to current figures are in a better condition by 20 per cent.

I also wish to say that my figures indicate that the railroads in the Southeastern District are bonded about 60 per cent of their investment in road and equipment, in comparison to 60 per cent in the Western District, and 68 per cent in the Eastern District.

The preliminary abstract of statistics of the common carriers, published by the I. C. C., for 1923, gives figures from which I have compiled the percentages of accumulated depreciation as compared to the investment of these roads in the various districts, and I find that the roads in the Eastern District have accumulated a depreciation reserve of 9 per cent, in the Southern District 8 per cent, and in the Western District 6 per cent. (Tes. 1270-74.)

[fol. 855] Cross-examination:

The Pocahontas Region is included in the figures as compiled by the I. C. C., from which I took my figures, in the Eastern District. Throughout my calculations and comparisons of per ton mile and other revenues, I have used the Eastern District as a whole.

"Q. Including what commonly is known as Trunk Line Territory, and Central Freight Association Territory, and including also the New England Region?

"A. Now, I am not prepared to answer from the tariff classification territories, but the figures were taken from the same classification by districts as the I. C. C.; in other words, the same classification was used all the way through in taking my——"

I am not prepared to say whether the figures would be different if I drew your comparisons between the South on the one hand, and Central Freight Association Territory, or Eastern Trunk Line Territory on the other. (Tes. 1274-75.)

(Witness excused.)

J. H. Alldredge was thereupon recalled as a witness and, having been previously duly sworn, testified further as follows:

I overlooked dealing with the short lines this morning in my testimony, and I wanted to devote just a few minutes to that matter.

The Alabama Commission recognized in its decision that the short lines were properly entitled to higher basis of rates than the standard lines, and it prescribed a basis 20 per cent higher for single line hauls over the short lines than it prescribed for single line hauls over the standard lines, and on joint haul traffic between points on standard lines and points on short lines, it made the scale 10 per cent higher than the joint line scale for standard lines. That [fol. 856] is the basis proposed by the short lines to the Alabama and Georgia Commissions. I will confess, however, that I believe the rates could have been simplified by prescribing the uniform level for both standard lines and short lines, and then taking care of the short lines with arbitraries. I believe that would result in simplifying the rate structure, but we got started the other way on the first commodity, and we just kept it up.

Now, it has been my observation, and I have watched the situation for several years now pretty carefully with respect to short lines, that their chief problem is holding their traffic against the automobile and truck competition, and naturally, with a higher basis of rates than the standard lines operate, and a somewhat poorer service, they are more vulnerable to that sort of competition than the standard lines are. They cannot always afford a high basis of rates to increase their revenue on that account. The conditions vary considerably between the different short lines, and it is quite difficult to prescribe a uniform basis of rates for them on any commodity, especially on fertilizer. Some of the short lines in Alabama haul very little fertilizer, and others haul a good deal of it, comparatively.

We have also been investigating the accounts and records of these short lines, and we find almost invariably that they are not kept in the form which the Interstate Commerce Commission's regulations prescribed, and I don't think that their reports are accurate at all.

The Alabama, Tennessee & Northern Railroad operates over in the Western part of the State, and we find that if the accounts of that road were reconstructed on the basis in accordance with the regulations of the Interstate Commerce Commission, and using the tentative valuation which has been announced, it would be making fully 5¾ per cent [fol. 857] if not a little above that, and I don't think it is suffering at all, and I do not think it would suffer under the Alabama scale of rates.

Now, the little road down in Southeast Alabama which Mr. Streyer referred to, the Alabama, Florida & Gulf Railroad, I am personally acquainted with, and I know positively that that road's chief difficulty is with automobile and truck competition. It has lost most of its business, and it is situated so that it is very difficult for that road to work out any system of rates that it can operate against that competition. We have advised the officials of the road to come up and discuss the matter with us, and we would help them all we could to work out of their difficulties, and frankly, I do not see any way out without rebuilding part of the road. It is situated so that most of its local business requires a joint haul in connection with the Atlantic Coast Line, and in a roundabout way, and the trucks just play havoc with its business.

I think that the short lines ought to have a higher basis than the standard lines, but I do believe that the basis which the Alabama Commission has prescribed is about as high as they can successfully operate against the competition which they meet. That is my observation. (Tes. 1275-78.)

(Witness excused.)

"Com. Eastman: Are the carriers prepared to make any announcement with reference to traffic tests?

"Mr. Gwathmey: Why, yes, Mr. Commissioner. I want to say that in accordance with your admonition, that we spend the entire lunch hour, at the expense of any opportunity to get any lunch, discussing this question, and I hope very much indeed that it will not be decided to insist that the carriers simply submit this data this afternoon in its present shape, and without any accompanying explanation.

[fol. 858] "I want to make a frank statement of our position about this, especially in view of the fact that it has been suggested here that we are merely trying to quibble.

"The Commissioner will recall that we had all understood that this hearing would run over certainly until Wednesday of next week, and we were told day before yesterday that there was a likelihood that it would wind up today. As soon as we heard about that we got hold of the chairman of the Accounting Committee by telephone and telegraph, and urged him to come here as quickly as possible with these statements.

"Now, it will be recalled that when the statements were first prepared very material errors were found because of the fact that one of the lines had made some mistake in the basis on which it had taken the figures, and the entire thing had to be reworked, and of course that delayed it.

"Now, Mr. McKay, the chairman of the Accounting Committee, has gotten here, and he has this tabulation with him. He tells me that it was compiled on the basis of a questionnaire which he sent out to the accounting officers of all of the different railroads, asking for certain data from each line. Neither the traffic officials nor counsel have had any opportunity to go over those figures or discuss it with the accountant, nor have these officials had any opportunity to discuss with the accounts of their own lines their respective roads, this data.

"Under those circumstances, and realizing as I think we all do, that this matter of the traffic test is a very important thing in this case, I for one, certainly feel a very great hesitation in simply filing here in this record today a compilation which we have not even had a chance to read. We simply glanced at it, and discussed the figures with Mr. McKay, and have had no opportunity to analyze it; and particularly, Mr. Commissioner, we feel that when this state-[fol. 859] ment is presented the carriers should have an opportunity to submit with it certain accompanying testimony. There are certain features of the matter that we think ought to be explained, and that we ought to be allowed to explain. There are certain further analyses that the accountants have not yet made, that we think the Commission ought to have. I might mention, among other things, this; we want to show what effect upon the revenue results is

in connection with particularly the increases sought by the short line railroads, 50 cents, I believe it is, over the regular scales. We want further an opportunity to analyze this statement to show what the results would be by States; and particularly, and I think this is extremely important, we want an opportunity to show what this analysis would mean in its effect upon the individual railroads.

"Now, those are some of the things that we want to present at some time when we present this statement, and we have not had an opportunity, and are not prepared to do that today; we cannot possibly do it; in fact, there are some additional figures that will have to be worked up, and that cannot be worked up today, so that I very much hope that we will not be expected simply to file this statement without any accompanying testimony, as we would have to do if we filed it this afternoon. Now, as I say, we had expected that during the course of the hearing we would get this here and we would have an opportunity to go over it, and prepare this data certainly by Wednesday of next week, and I will say now, Mr. Commissioner, that if you see fit to hold this hearing over until that time we will undertake to be ready at that time to put in what we have to say. If that cannot be done, why, we want an opportunity to file these figures and at the same time submit our explanations with it. We would like very much to have that." (Tes. 1278-81.)

[fol. 860] "Com. Eastman: Following discussion off the record, it is understood that the carriers will be ready to furnish to all parties to the case copies of the traffic test, together with its explanatory statements, such as they may care to make, within 10 days from today. It being understood that they will be at liberty to supplement that with certain additional incidental testimony at the hearing later, and if they are, they are to advise the parties of the essentials of their position by sending copies of the traffic tests and explanatory statements within 10 days from today." (Tes. 1283-84.)

J. H. Tench was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

I now offer this Exhibit 477.

(The statement was thereupon received in evidence and marked "Protestants' Exhibit No. 477, Witness Tench.")

The Brewster people ship phosphate, ground phosphate rock, and also ship sand to building contractors and for road building purposes; and they also ship sand, as I understand it, for fertilizer filler. That sand is the same sand, ground fine, that is shipped to the fertilizer factories. Unground it is used in concrete construction. The reason that they cannot use the cars that are littered up with all kinds of dunnage for the loading of this sand for construction or road-building purposes, is that the builders require clean sand for concrete work, and would turn it down because it would be necessary to reclean it. So far as that ground sand for the fertilizer factories is concerned, they object to having foreign matter in that; they could not use it without working it over. While this is not cars to ship fertilizer in itself, it does go to the question of the attitude of the railroads with reference to the cleaning of cars. (Tes. 1285-87.)

[fol. 861] C. I. Baird was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is C. I. Baird; I live in Gainesville, Fla. I appear here as witness for the Standard Fertilizer Co., of which company I am an officer. Gainesville is a common point to both the Seaboard and the Atlantic Coast Line, about 70 miles from Jacksonville and about 40 or 50 miles north of Ocala.

We have been having a rate of three-quarters of the regular fertilizer rate on fertilizer materials, and in this proposal from the shippers and railroads, neither one of them mention a continuation and we wanted that. At pres-

ent we have a rate on fertilizer materials, carloads 30,000 pounds, 75% of the regular fertilizer rate. The rate that we use now, of course, would be larger if that present rate was eliminated. For instance, Rochelle is 95 miles from Jacksonville, and the freight is $2.59, and from Gainsville it is 10 miles, and the freight is $1.47, and combined with our freight in three-quarters of the present fertilizer rate, makes our Rochelle freight $3.16, or 57 cents more now than Jacksonville pays. Rochelle is 10 miles from Gainesville. Then, Ocala, a distance of 41 miles, their difference is 90 cents, Jacksonville over ours. It is 127 miles from Ocala to Jacksonville, and their freight is $2.82, and our mileage is 41, and our freight is $2.03, and our inbound freight $1.69, makes it $3.72 against their $2.82, would be 90 cents difference.

(The statement was thereupon received as "Protestants' Exhibit No. 478, Witness Baird.")

Now, Webster is 180 miles from Jacksonville, and the freight is $3.15, we are 94 miles from Webster, and the freight is $2.59, and into Gainesville $1.69 makes it cost us $4.28 against Jacksonville $3.15, a difference of 113 cents. Lakeland is 212 miles from Jacksonville, freight $3.15, our mileage is 148, and the freight $2.93, and into Gainesville [fol. 862] $1.69, making $4.62, a difference of $1.47 cents. Arcadia is 264 miles from Jacksonville, and their freight is $3.27; our mileage is 210 miles and our freight is $3.15, and into Gainesville $1.69, a total of $4.84, and a difference of $1.57. (Tes. 1287-1289.)

Whatever the readjustment is, we wanted to have a material rate of three-fourths of the fertilizer rate, where it is shipped in. We have to buy our own materials at the ports. We are handicapped as indicated because of our competition with the factories that have port locations. This difference here, you see, is figured on the present three-fourths of the fertilizer rate, and in fixing this new rate, there is nothing being said about allowing us the material rate for the interior points. We get our acid phosphate from the ports. The freight is just the same; they produce acid phosphate at Port Inglis. It is just the same from there as it is through Jacksonville. That is on

the Gulf. There is no acid chamber at Tampa. There is no acid chamber in the big phosphate mining district. The nearest to it is Port Inglis.

It is true that practically any interior fertilizer plant in Florida is surrounded by ports. It would be pretty hard on us if this disadvantage under which we are now laboring is increased; that with the difference now it is hard to operate. I would say it would be almost impossible to do business. If the rate on fertilizer material be established, I, as the owner of the plant at Gainesville, would be willing to have a minimum carload weight on that material of 25 tons, or something in that neighborhood. We get fertilizer material in 25-ton carloads. We would be willing for the material rates to be based on 25 tons. (Tes. 1290-92.)

With reference to the question of credits: You take in a local territory like we are, a farmer cannot go to the port and get credit the same as we give it to him, because he is not acquainted there, and a lot of it is a moral credit, and a moral risk; that is you know the man.

[fol. 863] It therefore would be, in a sense, an advantage to the small farmer in the interior points to have these plants located at interior points, so situated that he can live and do business at a fair profit.

"By Mr. Burr:

"Q. Now, what have you to say about basing these rates, making a minimum of 25,000 pounds carload on mixed fertilizer; what is your opinion on that?

"A. Ours ought to be 15 on fertilizer."

20 tons for a good many small truck growers would be too much; they would not buy it; it would work a hardship on them. The use of fertilizer in the fruit and vegetable section differs somewhat from the use of fertilizer in the cotton and corn belt in Georgia and Alabama, in that they are buying this fertilizer throughout the year; we sell it 12 months in the year. They put on a number of applications and usually for different crops. The farmer would not buy in the spring all the fertilizer that he expected to use next winter. (Tes. 1292-93.)

Cross-examination:

I said I was particularly concerned with the rates on the materials and whatever the mileage rate on the fertilizer may be I want our material 75% of that rate. So far as the level of the rate on fertilizer is concerned, I am not here making any particular protest one way or the other.

I testified that some of the truck farmers could not buy over a 15-ton carload. They buy both ways, jointly and individually. I don't think that several could join together and buy a carload and take the 20-ton minimum car. I would say about 10% of our tonnage would move out by truck or by wagon. The balance would move out by rail. I do not know what the average load per car is. I have a great many 20 tons or more. (Tes. 1293-1295.)

(Witness excused.)

[fol. 864] R. H. Harrison was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is R. H. Harrison; I am traffic manager of the Chamber of Commerce, Orlando, Florida, and represent the Southern Fertilizer Works at Orlando. I have some exhibits I wish to present at this time.

(The statements were thereupon received in evidence and marked "Protestants' Exhibits Nos. 479, Witness Harrison.")

I have a comparative statement here showing the rates from Jacksonville on manufactured fertilizer to A. C. L. stations, also from Jacksonville to stations on the Wildwood Branch of the Seaboard Air Line. That is from Jacksonville, which branch reaches Orlando. I also have statements showing fertilizer rates from Tampa to stations on Atlantic Coast Line Railroad. This statement shows one instance, Pine Castle, Florida, 151 miles from Jacksonville, that the fertilizer rate from Jacksonville is $3.04. Pine Castle is 4 miles from Orlando. The fertilizer material rate, Jacksonville to Orlando, is $2.20. And, the

fertilizer rate from Orlando to Pine Castle is $1.47. The combined rate into Jacksonville, plus the fertilizer rate out, is $3.67, which gives Jacksonville a present advantake over Orlando of 63 cents. That is the nearest point to Orlando that I have on the statement. The balance of that is just the same, only different stations, and different mileages; it covers other stations. It goes as far as Fort Myers, which is 310 miles from Jacksonville and 163 miles from Orlando, and that advantage then would run to $2.08 per ton, against Orlando. And, the same is true to stations on the Searboard Air Line, on the Wildwood Branch. It happens that the rates from Jacksonville to all stations on the Wildwood Branch is the same from Jacksonville. [fol. 865] Of course, from Orlando we have a mileage rate, and it works out a difference on the farthest point on the Wildwood Branch, which would be Wildwood itself, and its present advantage over Orlando is $1.52; and to the station on the end of the branch, which would have to pass through Orlando to get to, Oveida, a distance of 16 miles from Orlando, which is the only way to get to Oveida, the advantage is 85 cents, and the manufacturers at Orlando feel that at the present time that it is mighty hard to compete with Jacksonville now, and also with Tampa, and in this hearing, if the fertilizer material rates are wiped out—in other words, I mean, if they are not 75 per cent of the mixed rates, then we won't be able to stay in business. It is mighty hard as it is now, and anything else coming on top of that would make it mighty hard for them. And, I also feel that the fertilizer materials, if they make a lower rate than on the fertilizer, that it would be all right for them to make the minimum on the material probably 20 tons. That they could bring it in all right on that, but on the complete fertilizer I don't think that it should run over 15 tons, because they have the same situation at Orlando that they do at Gainesville. They do not ship out these large cars, and it probably would not be possible that all of their customers would be able to handle these large cars—I mean larger than 15 tons. We get all of our materials from Jacksonville; the majority of the material comes from Jacksonville. They do get some from Tampa. Our distance from Jacksonville is 149 miles by the Coast Line

and to Tampa 94 miles by the Coast Line, which is the short mileage in both cases.

Tampa would be a more favorable market, but it is not always possible to get those materials at Tampa. Tampa is not the port that they have in Jacksonville, I do not think, for the fertilizer materials. Of course, they might have them down there sometimes, but I am quite sure that that large majority would move from Jacksonville rather [fol. 866] than Tampa. As to how many plants there are in the interior now. I do not know whether I can answer that exactly. I know there is one plant in Orlando—and there is a plant in Gainesville, a plant in Lakeland, and there are only three that I actually know of. In Orlando we have Armour & Company, they have a warehouse there. I believe that we have Swift, and we have a branch of the Virginia-Carolina there. They have their warehouses there. They could use those large cars down to Orlando, and put them in their warehouses, you see; they could have it manufactured at the ports where they have their manufacturing done, ship it down to Orlando, and put there in the warehouses, where the small plant could not do that because they have to bring in that material to Orlando. They have not any warehousing in transit privilege. That fertilizer that comes to the warehouses is complete fertilizer for the large companies, but the fertilizer that they would have there would be for the local trade. They would not have it there to reship out of there, because they could ship out cheaper than from Jacksonville, rather than pay that rate down there, and pay the other rate out, when they have this favorable rate from Jacksonville now, compared to the manufacturers in Orlando. It is for the local trade that they have plants there. I should not see any reason why they should have very much shipped from their warehouses there. I think that is true of Armour, the V-C, and Swift. I am quite sure that most of their shipping throughout the State is done from Jacksonville, or wherever they have their plants. That they do not ship down to the warehouse to reship, because that would make the rate too high on them. I do not know of any other State where the practice prevails in charging 25 per cent less on the materials than on the completed fertilizer.

[fol. 867] "Q. Now, in these other States, they do have interior plants, don't they, though?

"A. Why, they do, there in Virginia I know they have plants at Norfolk, on the coast, of course, and at Richmond, I think they have plants there." And in Georgia, but I am not so very familiar with Georgia, but I know in North Carolina they have quite a few interior plants, and they also have plants on the Coast. They have a plant at Wilmington, the V-C. I can't answer how those interior plants operate without a concession in the material rates. They don't always get their materials from the ports. Now, I know in the State of North Carolina there, the plants there at Winston-Salem, that they use a lot of tobacco stems they get in Winston-Salem there now. That is something that goes into the manufacture of fertilizer. Also they have their acid chamber, I think every one of those fertilizer plants, and in North Carolina or Virginia, that they have their acid chambers there. They make their own acid phosphate, which, of course, is the base for most fertilizer, and I know that they do get those tobacco stems, so that would be one reason why they could operate, whereas, down in Florida they would not be able to operate. Ours is just a mixing plant.

"By Mr. Burr:

"Q. North Carolina has a different rate on fertilizer materials than mixed fertilizer?

"A. I did not know that, Mr. Burr. I probably should have known it, but I did not." (Tes. 1295-1301.)

Cross-examination:

I do not know whether we ship down to Fort Myers or Punta Gorda. I know they do go down as far as Sebring, they go down to Arcadia. Of course, Auburndale and these points south of Orlando on the main line to Tampa, and maybe one or two points there off of the branch at Haynes City, and the Jacksonville Branch. I imagine Jacksonville ships into that territory, too. You can see they could very easily ship it better than we could to those far [fol. 868] points. It is mighty hard to get into those far points.

"Q. Regardless of the difference as much as $1.75 in the Jacksonville rate as compared with your combination in favor of Jacksonville, you are able to ship down into that territory, as I understand your exhibit?

"A. Why, there is not very much of it done down there, because that is too much of a difference on a ton of fertilizer. They might have an occasional shipment down there." We have to take care of that difference out of our price. You have to shrink it. If we want that business, and go down there, we would have to do it. We ship a good deal into the Lake Wales section; the Southern Fertilizer Works do ship down in there. They don't make very much profit out of that. It has all to come out of their own pockets, of course; it is competitive business with Jacksonville. What we want here is a continuation of the 75 per cent basis on the fertilizer materials, on fertilizer material on intra and interstate; the import rate, of course, might be considered interstate. I am raising a question one way or the other as to the level of the fertilizer rates proper; I feel in Florida now that our rates, I believe they are the highest in the South. I think they are away too high as they are, and that we should have lower rates, and I certainly would raise objections to our present rates; we want lower rates.

"Q. Now, the bulk of your movement is for relatively short hauls, is it now?

"A. Why, some of these points here represent a distance of, we will say, 100 miles."

I have not been over it to see whether the rates which the carriers are proposing will reduce our present rates on the shorter hauls. I had a chance to glance at that scale last week, but I did not have a copy of it, and I wrote for a copy and did not get it by the time I left town. I happened to see a copy that Mr. Tench had. It is a fact that the fertilizer transported by the railroads in Florida and [fol. 869] placed in Florida soil results in more long-haul, high-grade tonnage to the railroads than a similar quantity of fertilizer would result in any other point in the South; I don't think there is any point in the South that the railroad gets more revenue from the actual movement than

they do in Florida, and if we have lower rates on fertilizer there, that will mean they will raise more vegetables and raise more citrus fruits, which is mighty good tonnage for the railroads, it pay a good price. I am not much of a fertilizer man when it comes to telling you what kind they use. I am not in the fertilizer business; I am with the Orlando Chamber of Commerce. (Tes. 1302-04.)

W. C. Hutchinson was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is W. C. Hutchinson, and I am representing Chase & Company at Sanford, Florida. Chase & Company mix fertilizer at Sanford, Florida; they have their plant at Sanford, Florida. Chase & Company, a corporation organized and existing under the laws of the State of Florida, is engaged in the mixing of fertilizer, in the sale of the product thereof with its plant at Sanford, Florida. Sanford is located on the St. Johns River, 131 miles from Jacksonville over the Atlantic Coast Line Railroad, and is served by the Clyde St. Johns River line in competition with the Atlantic Coast Line Railroad Company, the traffic from Jacksonville. Under the present system of rates Jacksonville shippers can ship fertilizer to the points beyond Sanford cheaper than Sanford shippers can bring the material into their plant at Sanford from Jacksonville, mix the material and ship to the same points. Take, for instance, Winter Park, 148 miles from Jacksonville and 17 miles from Sanford; the rate on complete fertilizer from Jacksonville to Winter Park is $2.93 per ton, any-quantity [fol. 870] rate. The rate on fertilizer material to Sanford is $1.61 per ton, minimum weight 30,000 pounds. The rate on complete fertilizer from Sanford to Winter Park is $1.78 per ton, any-quantity rating. The rate of $1.61 on fertilizer material, Jacksonville to Sanford, plus the rate on complete fertilizer, Sanford to Winter Park, will make a total rate of $3.19 per ton against the rate of $2.93 from Jacksonville to Winter Park, giving Jacksonville shippers an advantage of 26 cents per ton.

I wanted to say Chase & Company handled approximately 15,000 tons of fertilizer materials into their plant at Sanford last year. That is the approximate estimate.

I have an exhibit here, which you have passed around, showing comparison of rates on fertilizer where shipped from Jacksonville direct to stations, shipped to Sanford, manufactured and reshipped to some stations over the Atlantic Coast Line Railroad.

(The statement was thereupon received in evidence, and marked "Protestants' Exhibit No. 480, Witness Hutchinson.")

This exhibit shows the distance from Jacksonville for Beck Hammock, Winter Park, Mount Dora, Kissimmee, Florance Villa and Plant City. These figures of rates are the same as the other exhibits that were handed here before.

I am not satisfied with the minimum of 20 tons of fertilizer. I think the 20-ton minimum is too high for Florida, and I think a 30,000-pound minimum would be satisfactory on complete fertilizer, 15 tons, and on materials 20 tons would be satisfactory. The minimum weight on complete mixed fertilizer is 15 tons, and that would be satisfactory. At present there is not any minimum; it is any-quantity rating at present. Materials move only in carloads, 30,000 pounds. I am asking that 75 per cent. of the fertilizer rate be continued. I am not asking for that any-quantity rates on complete fertilizer. (Tes. 1305-8.)

[fol. 871] Cross-examination:

Chase & Company are very large handlers of citrus fruits. Chase & Company do not buy the oranges from the growers; they only handle oranges on commission. In some instances they may buy oranges; I am not sure of that. I spoke of Chase & Company producing 15,000 tons of fertilizer. They supply fertilizer to the growers with whom they deal; some of their growers, and they sell fertilizer to men with whom they have no dealings whatever, so far as handling vegetables and citrus fruits are concerned. (Tex. 1308.)

Hugo Ignatius was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is Hugo Ignatius; I am assistant traffic manager of the Buckeye Cotton Oil Company, offices at Cincinnati, Ohio. I make my statements in behalf of the Interstate Cottonseed Crushers Association, of which I am chairman of the traffic committee. I also appear in behalf of the individual State Associations or crushers.

This question of cottonseed meal as a fertilizer was gone into quite fully at the time of the Consolidated Classification proceedings, and as was indicated at that time, cottonseed meal has been accorded a berth in the fertilizer list since 1889, approximately 36 years or more. The authority of the first publication was Supplement 4 to Southern Railway and Steamship Association, Circular No. 5 Series 1888 and 1889, effective April 2nd, 1889. It is in connection with this article and its classification in the Southeast that I wish to direct by statement. I will not offer much testimony, but do endorse what was placed in the record by the witnesses for the National Fertilizer Association, and of the Alabama Railroad Cotamission.

[fol. 872] Cottonseed meal has three general markets; the fertilizer market, feed market and export. The demand for cottonseed meal as fertilizer is predominant in the Southeast, and in the New England Territory. The conditions in the Southeast are well known, and the use of meal as a fertilizer in New England Territory is in connection with the growth of onions and tobacco. I have one exhibit which I wish to offer and submit at this time.

(The statement was thereupon received in evidence, and marked "Protestants' Exhibit No. 481, Witness Ignatius.")

I offer this exhibit simply to put in concise form some statistics regarding the production of cottonseed meal as shown in the American Fertilizer Handbook. I also indicate for convenience the amount of meal that was exported according to this authority. It will be noted that the production of meal in the Southwest surpasses the pro-

duction of meal in the Southeast, although the tonnage in each respective territory is very considerable. It has been testified previously that there is comparatively little tonnage of all of the fertilizer materials used in the Southwest, consequently, the use of meal must also be relatively small. It is generally known that the cottonseed meal produced in the Southwest is marketed chiefly to the feed trade, both in the Southwest and in the Northwest. Some amount of the cottonseed meal produced in the Southwest is also shipped to Official Classification Territory, because the demand is not sufficient in the West to absorb the total production. I cite this to indicate that there is no opportunity for any of the cottonseed meal produced in the Southeast to find any outlet West of the River. The cottonseed meal which is shipped into Official Classification Territory, with the exception of that tonnage used in the New England Territory for fertilizer purposes, is generally used in the manufacture of mixed feeds. I might state that the demand for cottonseed meal in the Southeast does not offset the necessity to ship a certain portion of this tonnage to Official Classification points in competition [fol. 873] with the various grain products grown in the North and used also in the manufacture of feeds. The export market is rather an indefinite factor. During the period just after the war, the Central European powers and the United Kingdom produced a lot of vegetable cake or meal of their own. At this time they are regaining their former position in the oil-bearing products, and will supply practically all of the requirements that they will have for this particular product. This condition existed previous to the War, so that any export of meal was generally considered a distress feature. In other words, it was forcing the disposition of meal produced here to such markets as would absorb it.

The cottonseed cake is a product as taken from the presses after the oil has been extracted from the meal. This is allowed to cool and harden, and is ground into meal. There may have been some shipments of cake that were taken on by fertilizer companies and ground, I am not so sure about that. Cake is not used in that form, it has to be ground before it can be used for any purpose. In the Southeast the predominant use of meal is fertilizer.

As I testified, in the Southwest the predominant use of meal is for feed, because there is no fertilizer market. Any fertilizer shipped into the North is generally absorbed by the feed markets, except for that particular section in New England, which takes in a good deal of the meal which is used on the farms for onions and tobacco. It varies in the seasons, as to whether the bulk of the cottonseed meal goes into fertilizer, or is used for feed. That use of any ingredients in the manufacture of an article, which is open to the use of many kinds of ingredients, will vary. Market conditions do fluctuate on that. I think possibly it is correct to say that in the last year there has been a deflation, so far as fertilizer companies' use of meal is concerned. This year it is freely estimated that the fertilizer trade will absorb a great deal of meal. The large production of meal in the South will encourage its use [fol. 874] more freely for fertilizer, this being the second year of a good crop, will replace a good deal of the tonnage in the market, and necessarily will place it within the scope of the fertilizer industry.

I do wish to say, so far as export is concerned, that is usually directed from the Gulf and South Atlantic Ports. I simply wanted to give that résumé of the general movement of the meal in the whole territory in which it was produced, and also the character of its market, which absorbs the meal. My conclusion is that so far as the Southeast is concerned, within the territory embodied by this complaint, the excepted classification of cottonseed meal should continue to be as fertilizer, as it has been during the past 36 years.

That is all I have to offer.

The price of cottonseed meal, right now, is fluctuating. I think the opening price of meal this year was about $35.00 or $36.00 a ton. That is new meal. Now, the mills are beginning to operate, and in less than a month there will be a large difference, because there will be a great deal of meal on the market. I would say in the meal season, after the mills have been operating for a month or six weeks, the price would fluctuate lower, to $30.00 or less basis. Of course I am giving my opinion; I am not in the selling game. (Tes. 1309-1314.)

[fol.875] D. A. Dashiell was called as a witness in behalf of the protestants and, having been previously sworn, testified as follows:

Direct examination:

This exhibit shows the average transportation assembly and distribution costs at Montgomery, Ala., showing the experience of the Capitol Fertilizer Company. The previous exhibit which dealt with this same subject was Exhibit No. 324, introduced by Witness Bates. This information was requested by counsel for the Louisville & Nashville Railroad.

(The document referred to was then marked "Shippers' Exhibit No. 324-A, Witness Dashiell."

Another sheet showing the experience of the Virginia-Carolina Chemical Company at Wilmington, N. C., is now offered.

(The document referred to was received in evidence and marked "Shippers' Exhibit No. 324-B, Witness Dashiell.")

Here is another sheet showing the experience of the Armour Fertilizer Works at Nashville, Tenn. In connection with this exhibit I would like to say that this exhibit is prepared by me from information furnished by Armour Fertilizer Works.

(The document referred to was received in evidence and marked "Shippers' Exhibit No. 324-C, Witness Dashiell.") (Tes. 1319-1321.)

(Witness excused.)

J. A. Strayer was called as a witness and, having been previously sworn, testified as follows:

My name is J. A. Strayer; Traffic Manager, American Short Line Railroad Association. At the Montgomery hearing I introduced certain evidence, and also Exhibit No. 285, which was a statement of financial and tonnage statistics of the short lines. I have an exhibti here of 64 pages covering the individual short lines and general facts about them which I would like to file at this time.

[fol. 876] (The document referred to was received in evidence and marked "Strayer Exhibit No. 482.")

That does not include the statement with reference to the Alabama, Tennessee & Northern. It is not in here. You will remember they had an exhibit of their own. (Tes. 1324-25.)

E. R. Gardner was recalled as a witness in behalf of the respondents and, having been previously sworn, testified as follows:

Direct examination:

I have been sworn previously as a witness in this case. The testimony which I will now offer deals entirely with the 4th section relief desired by the carriers in connection with its rates on fertilizer in southern territory.

With the order issued by the Commission directing a general investigation of the fertilizer rates in the Southern territory, there was also set for hearing certain unheard fourth section applications filed with the Commission in 1911, which protected the carriers with respect to departures from the fourth section of the interstate commerce act.

In this proceeding we are not asking the Commission for authority to continue the fourth section departures reflected in the present adjustment, but are seeking certain fourth section relief which would permit the carriers to make effective the proposed adjustment which has been explained. Until such a time as the proposed adjustment is made effective, the carriers request that the present relief which they are now operating under be not take away from them.

In connection with the proposed adjustment, the fourth section relief required and requested by the carriers in order to put that adjustment in effect may be divided into approximiately four general classes:

First, the maximum amount of relief permitted under the [fol. 877] fourth section of the act as amended, which provides in substance that the Commission may grant authority to the circuitous line or route to meet the rate of the direct line or route between competitive points, provided the rate

from, to or between points on the circuitous route as to which the hauls are not longer than from and to the competitive point, do not exceed the latter.

Second, maximum relief under the circuity rule from the pivotal point in the Ohio and Mississippi River and Gulf ports adjustment with additional authority based on special circumstances to apply the pivotal point rate to other points within the groups, provided the pivotal point rate is not exceeded at intermediate points on the direct line.

Third, authority for a joint line route to meet the rates between competitive points fixed by the single line route without observing the competitive rates as maximum at intermediate points, provided that the rates to intermediate points on the route of the joint line does not exceed the joint line scale, and, further, does not exceed the lowest combination;

Fourth, authority to apply to or from common points in connection with the short lines, or relief lines (heretofore recognized by the Commission as such and as entitled to special consideration) the competitive rates made by the trunk lines without observing the same as maximum at intermediate local points on the short, or relief, line, provided combination is not exceeded.

The relief sought in the first general class is the same as that which has heretofore been granted carriers making similar revision of rates on mileage, or distance, basis; for example, in Livestock to, From and Between Points in the Southeast, 74 I. C. C. 419, where rates were established predicated on a mileage scale, the Commission granted [fol. 878] fourth section relief to the circuitous lines, or routes, between competitive points to enable them to meet, at the competitive point, the rates contemporaneously in effect on like traffic via the direct line, and to maintain higher rates at intermediate points on such circuitous route, except that the authority granted did not include intermediate points as to which the haul of the circuitous line, or route, was longer than that of the direct line, or route, between competitive points. Similar relief was granted the carriers in connection with the Memphis Southwestern Investigation, 80 I. C. C. 157; Brick & Clay Products in the Southeast, L. & S. 1885, 88 I. C. C. 543; North Carolina Pine Association, 85 I. C. C. 270, and many other cases.

This class of relief, as indicated, is based on circuity and carriers with it the observance of the equidistant rule of the Fourth Section.

The second general class of relief sought is based on two grounds: first, that of circuity where the mileage scale is applied via the direct line from the pivotal point in the group, and, second, on special and unusual circumstances brought about by the maintenance of origin group adjustment, that is to say, it is proposed to continue the Ohio River original adjustment; for example, from the Cincinnati, Ohio, and Louisville, Ky., group to points in the Carolina territory the rates will be measured by applying the distance from the keypoint of Louisville, Ky., and the rates so arrived at applied from Cincinnati, Ohio, and other points in the Cincinnati-Louisville group. The rates from Evansville, Ind., and Cairo, Ill., and points within the Evansville-Cairo group will be made with relation to the rates from the Cincinnati-Louisville group. In order to maintain a group adjustment of this character, fourth section relief other than that based on circuity is obviously [fol. 879] necessary. Group adjustments are maintained on various commodities and the authority which we seek in connection with the proposed fertilizer adjustment is no different from that relief which the Commission granted in I. & S. 1885, Brick & Clay Products in the Southeast, based on special circumstances brought about by the necessity or desire to maintain group adjustments.

In order to preserve the grouping adjustment which is contemplated from the Ohio and Mississippi crossings, the carriers are seeking the maximum relief under the circuity rule from the pivotal point in the Ohio and Mississippi River and Gulf ports group, with additional authority, as I have explained, based on special circumstances to apply the pivotal point rate from other points within the group, provided the pivotal point rate is not exceeded at intermediate points on the direct line.

The third general class of relief is similar to that which the Commission has heretofore granted the carriers operating in the Western territory under the Memphis-Southwestern Investigation, 77 I. C. C. 522-23, as well as in Class Rates Between Missouri and Interstate Points, 100 I. C. C.

274, and in Fourth Section Application No. 12567, Vinegar to Texas Points, 98 I. C. C. 688.

It is proposed, in connection with the fertilizer revision, to apply for joint-line hauls rates made differentially higher than the rates for similar distances under a single-line haul, or, in other words, under the proposed adjustment the charge for a two-line haul would be higher than a charge for a single-line haul, although the distances may be the same in both cases. If it is proper to apply for joint-line hauls rates differentially higher than those for single-line hauls where the fourth section is not involved, obviously it is equally proper to charge the same differentials where [fol. 880] fourth section relief is necessary to meet the rate of a competing single-line route. The Commission has, in numerous cases, approved joint-haul rates higher than single-line rates and both the carriers and shippers propose such an adjustment in connection with the fertilizer rates. I mean they proposed such an adjustment in the fertilizer case.

Under the circumstances, the carriers are here seeking relief so as to permit a joint-line route to meet the rates fixed by a single-line route between competitive points and not to observe those rates at intermediate points and disregarding the equidistant provisions of the fourth section, but in no case to exceed the joint-haul rates at such intermediate points, or rates higher than combination. If such relief is not granted, it would prevent the carriers forming the joint-line route from securing the benefit of the joint-line scale at points intermediate to the competitive point.

In the Memphis-Southwestern case, the Commission held that the application of the equidistant provisions was not mandatory in a situation of this character and granted relief to the Western Carriers forming the joint-line route to meet the rate fixed by a single-line carrier between competitive points without observing that rate at intermediate points on the route of the joint-line carrier, provided the joint-line scale was not exceeded at intermediate points. We are seeking similar relief as to our fertilizer adjustment, which contemplates the application of the joint-line mileage scale on fertilizer in the Southern territory higher than the single-line. (Tes. 1327-1333.)

I have prepared certain exhibits for the purpose of illustrating the character of the relief sought by the carriers in this proceeding with respect to the fourth section.

[fol. 881] (The document referred to was received in evidence and marked "Respondents' Exhibit No. 483, witness Gardner.")

Pages 1 to 15 of this exhibit—and, incidentally, the pages are not numbered; I intended to file them as separate exhibits—pertain to circuity, strictly circuity. Page 15 covers the situation from Norfolk, Va., to Graysburg, N. C. These exhibits are compiled in line with the information called for in Fourth Section Order No. 8900. They show, first, the direct route, then the routes between the points involved, and just below that is the first intermediate point via the circuitous route at which relief is sought for account of all the lines that seek relief via the various routes; then the highest rated intermediate points via the circuitous route at which relief is sought; then the furthest distant intermediate point via the circuitous route at which relief is sought, and the percentage of circuity, present and proposed rates, revenue under proposed rate, mills per ton mile, revenue per car mile and revenue per car. I think that is Graysburg. Page 15. The exhibit shows Garysburg. We are not proposing any limitation on circuitous routes. We think that no limitation whatsoever should be placed on these rates and that should be left to the carrier to work out. No carrier is going to engage in the handling of traffic that is unremunerative. We request the Commission not to place any percentage of circuity in connection with the fourth section relief which they grant us. We would like to have open relief, the same as was granted in Docket 13494. That is bound to leave some of the routes open unless routing is shown. Now, it is a very difficult proposition to indicate the routing in the tariff to cover the routes that will actually handle the business. You will recall we had that same question up in connection with the brick adjustment, I. & S. 1885, wherein the Commission in [fol. 882] granting the carriers fourth section relief placed percentage circuity on it, and we found it impracticable to work it, and that the inserting of routes in the tariff would have the portion of the tariff carrying the routing several

times the size of the tariff actually carrying the rates. It is practically impossible to do it. And we are now, in connection with I. & S. 1885, before the Commission asking them to eliminate that portion of the fourth section authority which does actually place the percentage limitation on us. It is impossible to work out.

I have evidence indicating that the rates in question will be reasonably compensatory over their circuitous routes covered by your fourth section application. These exhibits go to show that, I think. That was the purpose of them. They were gotten up along the lines called for in fourth section order 8900 to show that very feature.

As I stated, pages 1 to 15 of that exhibit pertain to the matter of circuity. Pages 16 to 22 cover the illustration from Birmingham, Ala., to Atlanta, Ga. Those exhibits pertain to the matter of circuity first, then the joint line meeting the single line rate. For example, page 16 covers the illustration from Savannah, Ga., to Atlanta, Ga. The direct route of the Southern Railway makes the rate and the joint line route shown on that exhibit wishes to meet the rates at competitive points fixed by the single line route.

Page 18 covers the situation from Savannah to Sumpter. These points which I have taken are only trying to illustrate the situation.

The Southern Railway direct line fixes the rate between Savannah and Sumpter notwithstanding the joint line route here of the Seaboard and Coast Line makes a lower mileage.

Route 3 is the Atlantic Coast Line direct. Route 4 is [fol. 883] the Seaboard direct. Those circuitous lines wish to meet the direct rate of the Southern Railway, and the joint line wishes to meet the rate of the Southern Railway and apply the higher joint line scale at the intermediate points.

That is also shown on pages 19, 20 and 21.

Pages 23 and 24 deal with the situation where the single line makes the rate and the joint line wishes to meet it without observing the competitive rates at intermediate points, applying the joint line scale at their intermediate local points.

Fourth Section 8900 calls for five copies of the map showing the routing between the competitive points. There are

so many routes to so many competitive points that I have taken a junction point map of the southeast and have filed that as page 25 of my exhibit. (Tes. 1333-37.)

Our application does not show cases where we are seeking relief merely in order to maintain group adjustment. I failed to make any copies of this or any illustrations of those situations. It was so comprehensive I did not think it was necessary. We have the fourth section in connection with the grouping in the brick case, which was along the same line as the fertilizer, and we took Louisville, Ky., as the pivotal point in the Ohio River group to the Carolinas, and measured the rate from the Louisville distance and applied it from Cincinnati and other points in the group. Under that basis the Commission did give us fourth section relief based upon special circumstances and conditions to maintain that adjustment, that origin group adjustment. So the relief sought in connection with the fertilizer rates is similar to that which has already been granted by the Commission in I. & S. 1885. (Tes. 1337-1338.)

(Witness excused.)

[fol. 884] Gus Richmond was thereupon called as a witness in behalf of the respondents and, having been first duly sworn, testified as follows:

Direct examination:

My name is Gus Richmond. I am Commerce Agent and Chief Clerk in the General Freight Office of the Atlanta, Birmingham & Atlantic Railway.

The Atlanta, Birmingham & Atlantic Railway extends from Brunswick, Ga., on the South Atlantic Coast in a northwesterly direction to Atlanta and Birmingham, with branches running down to Thomasville and Waycross, Ga., comprising about 640 miles of road. The road is operated under a receiver at the present time, and has been since February, 1921.

Mr. Gardner has testified on behalf of the carriers as a whole, including the Atlanta, Birmingham & Atlantic, with respect to the present adjustment and the proposed adjustment, particularly the reasonableness and justification

of the latter; also as to the class of 4th section relief desired by the carriers as a whole or by classes. It is the present purpose of the Atlanta, Birmingham & Atlantic to apply the same level of rates as the other standard lines in the southeast, although later we may find it expedient to make our rate somewhat higher than over the other standard lines. There are many circumstances which would justify our doing so. Heretofore the Atlanta, Birmingham & Atlantic has given considerable thought to the policy of carrying higher rates than the other trunk line carriers with whom it competes, such as the Atlantic Coast Line, the Central of Georgia, the G. S. & F., Seaboard Air Line, Southern, etc., but due to the fact that much of the line closely parallels some of the other lines and it is intersected so frequently by the other lines it has been feared that a higher level of rates might divert traffic from [fol. 885] it to the other carriers and retard its local development. We look to the agricultural and industrial development of our local territory as our best hope of success. Even in the original proceedings in Docket No. 13494 the Atlantic, Birmingham & Atlantic proposed the same level of class rates as the other carriers but the Commission's tentative report proposing substantially lower rates than ordinarily proposed by the carriers and classifying certain of the carriers as "weak lines" and entitled to a higher level of rates seemed to warrant our asking for similar treatment in the matter of class rates. The Atlanta, Birmingham & Atlantic's exceptions to the proposed report in Docket No. 13494 gives these reasons more in detail.

Would it be permissible to stipulate into the record here the Atlanta, Birmingham & Atlantic's exceptions in the Class Rate Case, Docket No. 13494?

"Commissioner Eastman: Under the rule you would have to have copies to introduce as an exhibit."

The Commission granted our petition and left us free to establish such class rates as may be expedient. We would like to ask the Commission to leave the Atlanta, Birmingham & Atlantic similarly free in the case of fertilizer rates. Later we may be able to apply rates somewhat higher than the other lines, but in some cases, I am quite sure, it will

not be practicable to carry commodity rates higher than those of the other trunk line carriers else our object of developing our local territory will fail. This question of relative rate levels is of particular importance on commodities produced or consumed in the rural districts where other railroads are accessible at but slightly greater expense than is the Atlanta, Birmingham & Atlantic; such as outbound shipments of lumber, fruits, vegetables, mel-[fol. 886] ons, etc., and inbound shipments of fertilizer, road-building materials, etc.

Although, as stated, it is our present purpose to apply the same level of rates for single line and joint line hauls as the other standard lines, we ask the Commission to grant wide open Fourth Section relief such as is sought by the other "weak lines" and short lines who are proposing higher rates. In other words, we do not want the limitations placed on the relief that presumably will be placed upon the stronger lines.

We believe that our situation will fully justify the granting of this relief. As to the Fourth Section relief sought under which to establish and maintain certain group relationships from the Ohio and Mississippi River Crossings, Gulf and South Atlantic Ports, I do not think it necessary for the Atlanta Birmingham & Atlantic to make any individual showing, but the evidence introduced by the other witnesses with respect to the general justification for such relief may be adopted and relied upon by the Atlanta, Birmingham & Atlantic. The other standard lines, I believe, are asking for Fourth Section relief via circuitous routes, that is, they propose to meet rates made via the short routes between competitive points and apply higher rates at intermediate points on circuitous routes as to which the distance is not greater than the distance via the short routes between the competitive points.

The other standard lines are also asking for 4th section relief to permit the application of joint line mileage rates which are higher than single line mileage rates for equal distances. The Atlanta, Birmingham & Atlantic, of course, desires similar relief. (Tes. 1339-1342.)

Really what we mean by the circuitous routes which are not longer than the short routes is that if we establish the

same level of rates as the other trunk lines there would [fol. 887] probably be no case where our rates for equal or shorter distance on the circuitous route would be higher than via the short route, but there may be such cases, especially in the case of joint line rates there would be such, and in case we make our rates higher than the other lines there would naturally be cases where for an equal or shorter distance on the circuitous route our rate would be higher; and we want the privilege of carrying it. In other words, we want the Commission here to dispose of the carriers' fourth section relief, in so far as it affects fertilizer, and we would want to get such a Fourth Section order as would enable us to take care of our fertilizer rates hereafter without having to come back and go through the formality of an additional Fourth Section case; if you wanted to apply rates higher than the general level.

I have prepared some exhibits, one of which contains illustrations of 4th section departures via the route of the Atlanta, Birmingham & Atlantic, and the others deal generally with the reasons why we think the Atlanta, Birmingham & Atlantic should be given full relief, and that is a financial showing and showing of operating conditions. I would like to present those exhibits, as long as I have prepared them.

(The documents so offered and identified were received in evidence, marked "Carriers' Exhibits 484 to 491, inclusive, witness Richmond.")

Exhibit No. 484 is a map of the Atlanta, Birmingham & Atlantic.

Exhibit No. 485 is a statement containing illustrations of the 4th section departures via the route of the Atlanta, Birmingham & Atlantic. It will be observed from Exhibit 485 from Atlanta to Talladega, the short line, the Southern Railway, is 127 miles, and the route of the Atlanta, Birmingham & Atlantic is 200 miles, or 157.5 per cent of the [fol. 888] short line distance. The mileage scale for 127 miles is $2.70, which rate the Atlanta, Birmingham & Atlantic desires to meet. The single line mileage scale for 200 miles, however, is $3.38, or only 125.2% of the mileage scale for 127 miles.

Page 1 of the same exhibit shows from Atlanta to Birmingham the short line distance via the Seaboard or Southern is 166 miles, scale $3.15. That is the proposed scale. Via the Atlanta, Birmingham & Atlantic the distance is 275 miles, or 165.7 per cent of the short line distance. The single line scale for 275 miles produces a rate of $3.94, or only 25.1 per cent greater than the scale via the short route. Traffic between Atlanta and Birmingham is very important to the Atlanta, Birmingham & Atlantic as these two points are by far the most important industrial points or districts reached by the Atlanta, Birmingham & Atlantic. I will deal more particularly with this situation later.

The illustration of Birmingham to Columbus, Ga., on page 3 of this exhibit shows that via the Atlanta, Birmingham & Atlantic, Cordele, Ga., and Seaboard as compared with the short route of the Central of Georgia, is an extreme case of circuity. However, while the distance via Cordele is 147.7 per cent greater than the distance via the Central of Georgia direct, the joint line mileage scale via Cordele would be $5.07, or a little less than 61 per cent greater than the scale via the short route.

The route from Birmingham to Columbus via the Atlanta, Birmingham & Atlantic, Cordele and Seaboard, is a well-established one and is used occasionally for traffic considered profitable by this route.

I might say here that the Atlanta, Birmingham & Atlantic has to watch its earnings closely, and our soliciting forces are furnished statements of revenue that they receive on the different classes of traffic and guard against [fol. 889] handling, as far as practicable, traffic that is not considered profitable.

The proposed rate of $3.15 will yield 8.1 mills per ton mile via this route and 22.4 cents per car mile based upon average loading of 50,000 pounds, which was the average loading of all carload shipments of fertilizers handled by the Atlanta, Birmingham & Atlantic in 1923. This car mile revenue is more than our average cost of handling all carload traffic and is believed to be profitable.

On page 2 of this exhibit is shown the proposed rate from Macon, Ga., to Roanoke, Ala. The single line distance of the Central of Georgia, 167 miles, makes the rate $3.15.

The short route via the Southern Railway, Warner Springs and the Atlanta, Birmingham & Atlantic is 164 miles. That is a case where relief by joint haul route against single line longer route is desired.

My next exhibit, No. 486, average freight revenue per ton mile received by the Atlanta, Birmingham & Atlantic on fertilizer and other heavy moving commodities during the calendar year 1924. On all commodities, both carload and less than carload, the average ton mile revenue was 11.1 mills per ton mile, and this supports the presumption that the proposed rates between competitive points are reasonably compensatory when applied via the circuitous routes of the Atlanta, Birmingham & Atlantic as given in the illustrations in my first exhibit.

My Exhibit No. 487 is a statement of carloads forwarded from Atlanta, Ga., Birmingham, Bessemer and Woodward, Ala., via Atlanta, Birmingham & Atlantic during March, 1925. The statement shows the number of trains each day, the number of cars from Atlanta proper to Bessemer, Birmingham and Woodward proper and to points beyond via Birmingham, and the total number of cars from Atlanta proper for all points via all routes; also similar information with respect to shipments originating beyond and moving via Atlanta.

[fol. 880] On page 2 of the exhibit is shown the carloads moving in the reverse direction. The statement also shows the importance to the Atlanta, Birmingham & Atlantic of traffic moving between Atlanta proper and Bessemer, Birmingham and Woodward proper, which points are reached by the Atlanta, Birmingham & Atlantic, as well as of traffic moving to or from points beyond Atlanta and Birmingham.

This statement shows that 4.9 per cent of the carloads forwarded from Atlanta via the A. B. & A. were moving to or via the Birmingham group, and 19.5 per cent of the carloads forwarded from Birmingham, Bessemer and Woodward via the A. B. & A. were destined to Atlanta or points beyond via Atlanta.

By further calculation it will be found that of the total of 2,640 cars forwarded from Atlanta and Birmingham via the A. B. & A. during March, 1925, 329, or 12.5 per cent, were moving between Atlanta and Birmingham or from or to the points beyond via those points.

This statement also shows that the average number of loaded cars per train from Atlanta was 15 and from Birmingham 14. This does not take into account empty cars handled in the same trains or additional cars picked up en route and therefore does not represent the total number of cars per train handled. It does indicate, however, that the train run relatively light.

My next exhibit No. 488 is a comparison of revenue traffic density on A. B. & A. with a group of other Southern carriers with which it competes. It is less on the A. B. & A. than any other of the carriers in the group except the G. & F., which is classed with the short lines and is generally given full relief from the long and short haul provisions of the Fourth Section.

I understand these figures are for the entire system in each case. I am quite sure that is correct.

My next exhibit, No. 489, is a comparison of operating [fol. 891] statistics of the A. B. & A. with the same group of Southern carriers. This shows that for the years 1923 and 1924 the average number of freight cars per train, the gross tons per train and the net tons per train were less on the A. B. & A. than any of the other carriers in the group except the Georgia & Florida. This is due to light traffic on the A. B. & A. and the necessity of maintaining dependable service by observing fixed schedules whether trains have full tonnage or not. Additional traffic could be handled in the same number of trains without any appreciable increase in the operating costs. The statement shows that the average loading per car on the A. B. & A. is better than the average of the group as a whole or with the A. B. & A. and G. & F. excluded, which further emphasizes that the light tonnage per train is due to fewer number of cars instead of light loading of cars.

My next exhibit, No. 490, is a comparison of selected expense accounts per freight train mile and gross ton mile of A. B. & A. with 8 other Southern roads for the year 1924. This group of roads is not the same as in the previous exhibits for the reason that it was taken from statement prepared by the Bureau of Railway Economics for our Receiver for other purposes and we did not have the corresponding figures for the other roads in the group embraced in the other exhibits. (Tes. 1342-1350.)

This statment shows that the operating costs per freight train mile is less than any of the other roads listed. This indicates that the A. B. & A. can handle trains at less cost per mile than can the other roads and our average costs of handling trains from Birmingham to Atlanta for example would not be 65.7 per cent greater than the cost of the Seaboard or Southern Railway. Our cost per gross ton mile is less than the average but is somewhat greater than some of the other roads referred to due to the fact that our average number of cars per train is less than on the other roads.

[fol. 892] These comparisons simply go to show the efficiency with which the A. B. & A. is operated.

My next exhibit, No. 491, shows the A. B. & A.'s operating revenue and income years 1921 to 1924, inclusive, and indicates the gradual improvement of conditions on the A. B. & A. but shows that it is still very much in need of increased traffic. The statements show an increase in freight revenue. The passenger revenue for 1924 was less than 1923, due to competition with motor vehicles. This is also felt in freight service but not with the same relative result. While the total operating revenues show a constant increase, operating expenses show a decrease. This is particularly true of transportation expenses and maintenance of equipment. While the statement shows we had only $45,669 for funded debt which amounted to $290,570, this was better than in any previous year since 1917. I understand that a special debit of approximately $200,000 was made in December, 1924, on account of some readjustment necessary in the guaranty period account of 1920 and except for this we would have practically met all fixed charges for 1924. Conditions are gradually improving and efforts in this direction are being continued in 1925.

The A. B. & A. serves an important territory and a considerable population dependent upon it for transportation, and we feel that it should be permitted to continue to handle business via its circuitous routes in competition with the more direct and particularly with the financially stronger railroads. We feel that special consideration should be given to its financial condition and need of increased traffic, and the public interest justifying its continued operation. Such conditions have been duly recognized by the Commis-

sion in the case of the many short and financially weak carriers in Southern territory in F. S. O. No. 7026 and in [fol. 893] the Commission's decision in Docket 13494, and we are hopeful that A. B. & A. Ry. will be given such consideration and treatment in the fertilizer adjustment. (Tes. 1350-1352.)

(Witness excused.)

C. B. Dugan was called as a witness in behalf of the respondents and, having been first duly sworn, testified as follows:

Direct examination:

Name, C. B. Dugan, Superintendent of Transportation, Norfolk Southern Railroad, Norfolk, Va. I have been engaged in the transportation work about 25 years. I have been connected with the Norfolk Southern Railroad 20 years. In my official duties with the Norfolk Southern Railroad I have charge of car distribution and the movement of freight traffic. It has been my experience that equipment once loaded with fertilizer when made available for reloading contains odors of materials of such a nature as to cause contamination of other freight. Speaking about the inspection on the Norfolk Southern Railroad where freight is loaded by the Norfolk Southern: When we load or transfer freight the cars are inspected to determine their condition for the freight to be loaded therein. If the cars are found to contain an odor from fertilizer or anything else that is able to contaminate freight, the cars are thrown out and other cars substituted. The cars are swept out and lined with paper. During the fertilizer season we find it necessary to replace equipment that has been initially placed at our piers or warehouses for loading freight because of this odor, right frequently.

As to the practice with respect to the inspection of equipment where it is placed on a private siding for the loading of freight by the shipper: Well, knowing, as a rule, the [fol. 894] commodities that the shipper loads, suitable equipment is furnished, but we are not always in a position to say as to the odors that the car may contain. Very often

the car is released on a line of road where inspection is not possible. (Tes. 1352-1354.)

If a car were placed on a private siding and a shipper detected the odor of fertilizer, we are called upon in such cases to remove that equipment and place new equipment for loading.

Tobacco shippers will not load a car that they know has had fertilizer in it, whether they detect an odor or not; I presume on account of the possibility of contamination.

In the handling of fertilizer traffic I have had two very serious recent cases where this contamination arising from odor has damaged other freight. One was a carload of sugar that we transported from Norfolk, Va., to Greensboro, N. C., via Gulf, N. C. The sugar was in the car approximately three days. The car was passed, swept and lined with paper. Upon arrival at Greensboro the sugar was declined on account of an odor, which was very plain, and due principally to the car having been caught in a warm rain between Raleigh and Greensboro, which brought out the odor in the wood. We had that sugar placed in a warehouse and held there for 30 days and endeavored to free it from the odor. We were not successful, and we returned the sugar to Philadelphia to the refinery and had it reworked, at an expense, less the haul, of approximately $1,400 in claims.

The other case was where a car came to us last month loaded with oats. It was loaded on a connection at Norfolk. On arrival at Wilson the car was in our possession 24 hours when it was placed on the private siding for unloading, and the entire lower tier of oats was contaminated with the fertilizer odor, and some of the sacks and paper lining were eaten through. We paid $112 in that case. I know of a case where the communities, particularly those in North Carolina, have passed regulations attempting to prohibit the movement of fertilizer or fertilizer materials [fol. 895] through such communities. We had a very sorry experience with that about four or five years ago. I think all the lines coming through North Carolina had the same. There are ordinances at Charlotte, Wilson and Raleigh.

The kind of materials that I had reference to were green fish scrap. I was not attempting to say that applied to

complete fertilizer, or any other material except green fish scrap. I do not believe there is anything that is quite as rank as that stuff. That is what I had in mind on this particular ordinance.

I have examined a car that contained green fish scrap; there is plenty of dripping from it, and that is the main cause of trouble.

I am familiar with our classification, the Southern Classification. As to whether that prohibits the shipping of fish scrap in green state, I believe that change came about after this trouble. At that time the Classification did not prevent it, I am quite certain. It was possibly four years ago. As a matter of fact, we took the car into Charlotte, N. C., and the city authorities would like to have put everybody in jail. That was green fish scrap.

We had handled several cars right there in a short space of time, but it created such a furore along the line that we had to embargo it. There is really no comparison of the volume of green fish scrap and the fertilizer movement.

It is not now being transported at all because we will not accept it.

We embargoed it at the time we were threatened with arrest. That has nothing at all to do with the movement of other fertilizer materials. (Tes. 1354-1358.)

Those two cases to which I referred of the sugar and oats: The cars were not previously loaded with green fish scrap. The only reference I had when I stated the classification was changed was that at that time there was no restriction on the handling of green fish scrap. We would accept it as offered. Regardless of interstate or intrastate at this time we would not accept green fish scrap for movement.

[fol. 886] Approximately 60% of the bulk fertilizer traffic handled by the Norfolk Southern moves in March and April. The movement of that commodity requires expedited service. During the fertilizer season we are required to move empties into the fertilizer points all the time. There are not sufficient empties made in the territory to take care of the movement. The movement of inbound loads would not, I would say, create a car supply as much as 50 per cent of that required for the outbound loads, as a general proposition, so far as our line is concerned.

There is a movement of cotton and tobacco during the fertilizer season, but that is not the period of the year when the bulk of that movement is on.

The movement of those commodities, namely, cotton and lumber, do not materially contribute to the creation of an adequate car supply for the movement of fertilizer from industries on the Belt Line to southern points, so far as our line is concerned, because I have to furnish the Belt Line empties right straight along during the fertilizer season. (Tes. 1358-60.)

Cross-examination:

I would not attempt to say about what percentage of cars are made empty on the Belt Line, that is, to take care of the southbound fertilizer movement, without having access to the records of the Belt Line. I do know that there are quite a number of cars made empty on the Belt Line each day, and at times it happens that we do not have to furnish the Belt Line any cars some days.

I would say that the Belt Line could take care of probably 20 per cent of the car requirements, for the movement coming to the Norfolk Southern, having in mind that we have trunk lines coming in there and we have lines from Central Freight Association coming in and making empties. As a general proposition I would say yes. You are familiar with that.

In regard to the contamination of cars by reason of fer- [fol. 897] tilizer loading, I think the kind of fertilizer in the car that damaged the sugar was called Peruvian guano. Now what that is, I don't know. I would not attempt to say that that was the same material as chemical fertilizer. I have no idea what it is. So far as I am concerned it is just fertilizer.

"Q. Exactly, but you did not attempt to testify that commercial fertilizer had contaminated your cars, did you?

"A. In this oats case I believe that was so.

"Q. What kind of fertilizer was that?

"A. I cannot say what kind it was. The claim papers showed 'previously loaded with fertilizer.'" (Tes. 1360-62.)

I know that commercial fertilizer is shipped in bags. I have seen considerable sifting through the bags. The floor was quite sticky. That condition was caused by bags leaking or torn. I couldn't say why it should be sticky if it is absolutely dry. Probably water got into it, or something of the sort.

When Mr. Dalton asked a question along the lines of this supposed contamination of cars, I was speaking particularly of our shipments of merchandise where we load our cars, and that had nothing to do with the industries on the Belt Line or on our own line, except to this extent, that as to the industries on our own line we have a large number of tobacco industries, and we release cars on our own line at other places than Norfolk, and at Norfolk. In other words, we do not release sufficient cars at the piers at Norfolk to take care of the outbound movement.

We do not inspect the cars that are placed at the loading plants for loading out. I did not say that we did.

"Q. Do you know the number of brickbats and other different debris to be taken out of cars by fertilizer shippers?

"A. That is true not only of fertilizer people but everybody else, because the cars are not properly cleaned by the [fol. 898] receiver of the freight when he releases his shipment."

At our merchandise piers we accumulate about a carload of trash a day. I suppose there are other materials that have odors that we handle besides fertilizer. Take in the handling of oils, and they are usually loaded in a car that is not used for merchandise freight.

As to whether, in regard to fertilizer, just so you have a boxcar that is tight, that is sufficient for fertilizer: It has to be a first class car for fertilizer. It has to have a good tight body. I could not say as to the odors from what was previously in the car not affecting fertilizer.

As to some of these other commodities of which I spoke, such as sugar, we have to be particularly careful with those articles to keep them free from fertilizer or anything else that would contaminate them.

During the months of March and April, other than the transportation of fertilizer, we have — during a pretty good

lumber business, and merchandise, and we have some cotton and tobacco and miscellaneous freight. So far as cotton is concerned I have indicated that that is not very important at that time of the year.

"Q. The spring months are not the months of heavy movement of freight in the south, are they, and March and April particularly?

"A. With the Norfolk Southern that is the best month of the year, and the heaviest earnings."

The fertilizer movement contributes to it.

Fertilizer during March and April does not with us conflict with the peak movement of any other commodity during that same period. I don't know if that would be the same answer as applied to the south generally. I cannot answer for the south generally. We are anchored in the eastern part of North Carolina in a highly developed agricultural territory. (Tes. 1362-66.)

[fol. 899] We have some movement of sugar at Norfolk that is brought down from the eastern refineries. I cannot say as to the volume of it or what the volume amounts to. In the handling of sugar the same care in selection of the car for sugar must be made as for all the cars placed for loading of merchandise.

I found in this particular case that sugar has a propensity to absorb odors. As to whether there are other commodities which, if previously loaded in a car, would render the car not desirable for immediate use in the transportation of sugar: Well, now, I cannot say as to any other commodity because I have noticed so few commodities other than fertilizers. I am familiar with that because I spend a lot of time out on the road, and more of it than in the office. Now, in the case of oil, any freight that is subject to contamination from odor, oil will contaminate. With us we use what we call a car suitable for rough freight only in the oil service. That is lubricating oil. I haven't had any experience with any classes of traffic which render the use of the same car undesirable for the movement of sugar.

As to oats, it is a propensity of oats to be affected by odors; here is a case proven to our satisfaction. They were very forcibly called to my attention by reason of the fact on January 1st the loss and damage claim department happened to be put under my jurisdiction and these claims came to my attention. I inquired if we had many of that nature, and was informed that we had numerous small claims. These were the only two of which I had any knowledge that were excessive. My experience as to the odors in the cars came from my knowledge gained out on the road. I have had no experience out on the road with respect to the contamination by odors of sugar by any commodity other than fertilizer.

[fol. 980] "Q. Do you transport any other commodity which would render the car unsuitable for immediate use in the shipment of sugar?

"A. If we do it is very few cars, outside of oil, as stated."

As to the kind of matter that contaminated that car of oats: I don't know the kind of material. The claim of the consignee, which was investigated as to the condition of the car, simply states it as fertilizer.

I did not have in mind in our testimony concerning the contamination of cars the matter of car supply and the movement of cottonseed meal and cake. I don't believe that the condition that you have cited would apply to that movement.

The railroad paid those claims. (Tes. 1367-70.)

Redirect Examination:

This inspection system has been in effect on the Norfolk Southern Railroad for years. That inspection did not grow out of the experience of handling fish scrap or other kinds of fertilizer material. It arose out of the necessity of knowing that the car you are loading merchandise freight in is suitable to transport the commodity. We follow this inspection on all cars, irrespective of what was in it. It is necessary to follow that system with a car that has been loaded with fertilizer material, or fertilizer, or both or either. I mean with respect to both commodities. I think it is just as essential to have that inspection to prevent contamination on account of fertilizer as fertilizer material.

"Q. As to the objection of the tobacco shipper, Mr. Dugan, is that based upon the fact that the car has previously been loaded with fertilizer material, or fertilizer, or both or either?

"A. As explained to you, it comes to me as fertilizer. [fol. 901] Now that covers fertilizer, fertilizer materials and everything going into it, I suppose."

Fertilizer with us, being a seasonal movement, is at a time when the weather is not yet at its best, and a great many people receiving the fertilizer live considerable distances from the railroad, and it has not been because the cars are not released on the average as promptly as other freight. (Tes. 1370-72.)

McC. B. Wilson was called as a witness in behalf of the respondents and, having been first duly sworn, testified as follows:

Direct examination:

My full name is McC. B. Wilson. I reside in Wilmington, N. C. I am Chief Clerk to auditor of freight receipts, accounting department, Atlantic Coast Line Railroad. I am indirectly under Mr. W. D. McCaig, the Comptroller of the Atlantic Coast Line through the auditor of freight receipts, who is directly under the Comptroller.

In accordance with the instructions of the presiding Commissioner, and with the formula which was adopted after discussion between the Commissioner, the representatives of the shippers and the carriers, the carriers have undertaken to re-rate the fertilizer tonnage for a given period, using for that purpose the rates which the carriers have proposed in this proceeding. Mr. McCaig was the chairman of the accountants' committee appointed for that purpose. I have participated in the work throughout. I feel that I am qualified to answer any questions that others may wish to ask in reference to this test and exhibit which I will file in so far as the compilation is concerned.

Following the understanding that was reached at the last hearing at Montgomery, I understand that there was forwarded to the Commission and distributed to various interested parties a statement showing the results of this

traffic test, including with this statement a copy of the in-
[fol. 902] structions that were issued to the accounting officers for the purpose of preparing the test, and also as a part of the statement an explanatory sheet attached thereto which the carriers desired to submit along with the traffic test results. That was forwarded shortly after the Montgomery hearing.

A short time thereafter certain corrections were found to be necessary in this statement and the corrected statement was forwarded to the Commission and distributed to interested parties. I wish to substitute for that a portion of the corrected statement which covers this explanatory statement submitted by the carriers another sheet that will show in the explanatory statement the correction that was made in the original. And there has been one slight change also in the corrected exhibit, and consequently we have prepared a corrected statement, which is really the third statement which has been prepared, and I have that and am ready to introduce it. (Tes. 1373-1375.)

I now produce and offer for the record this statement in its final form which I have identified.

(The document referred to was received in evidence and marked "Carriers' Exhibit No. 492, witness Wilson.")

Those changes cover the months of March and April, 1925, with the exception of Florida. I intended to file those instuctions. I did not attach them. We can mark that as a separate exhibit. We thought if it was requested we could file them. The instructions have not been changed. Everybody was furnished with them originally.

"Mr. Gwathmey: It now understood, I believe, Mr. Commisioner, that the instructions to which I referred will be accepted and marked separately from the other exhibits."

(The document so offered and identified was received in evidence and marked "Carriers' Exhibit No. 493, witness Wilson.")

[fol. 903] Based upon such knowledge as the carriers have on the character of the fertilizer movement, it is the judgment of the Accounting Committee that the percentage of total revenue change that may be fairly considered to be represented by the results shown for those two months,

the total yearly revenue change is approximately 50 per cent of the movement for the year during those two months. In other words the result shown on this exhibit may fairly be considered as representative of 50 per cent of the results that would occur for the entire year. (Tes. 1375-77.)

Cross-examination:

Turning to statement G. sheets 1 and 2, that covers the single line hauls on all classes of commodities covered by this exhibit. That is fertilizer and materials.

I can give you quite a number of short lines that gave us those figures. There were a great many of them. I cannot give all of them from memory but they are furnished as a part of this exhibit, on statement O. Statement O does not include all short lines subjecting themselves to the test; it only includes the short lines who reported single line short line traffic delivered by them.

Included in that statement there are a number of short lines which do not reach any ports. As to how, then, could any short line handle imported material over its own line exclusively which does not reach a port: this statement contains tonnage of fertilizer and also cottonseed meal, etc., and necessarily those short lines, all the short lines that reported to us, reported under those three classes of commodities, and they are all included here, and there is no separation made. Statement G covers only single line hauls. Any tonnage included in that statement G need not be tonnage originating at a port or destined to a port to or from a single short line railroad; that is incorrect. Business that originated at any point on the short line or any of these three classes of traffic would be included in this [fol. 904] caption of statement G and delivered at a point on that short line would be included in the statement. I have not had occasion to take the tonnages shown in statement G and multiply them by the rate scale which the carriers propose with a view to checking the extensions shown under the column "Proposed revenue."

"Q. It appears that if the tonnages shown on that statement are multiplied by the rates shown as carriers' proposed rates for that class of railroad the extensions will not correspond, leading to a difference of approximately

$44,680. Since the extensions are not the same in any one block of mileage would it be a difficult matter for you to recheck that statement G with the idea in view of determining what may account for the difference between the result which you show and the result which would come about by multiplying the tonnage by the carriers' proposed rates?

"A. The only way that can be done is to have each line that contributed the figures—We got them in final recapitulated form, and they would necessarily have to make an analysis and furnish it, showing how it is divided."

The only thing that suggests itself to my mind is the fact that included in this statement there is some tonnage of imported fertilizing materials, and they were rerated on a different scale than the rest of the tonnage, and a lower scale in some cases. All I know is that we took the figures that the various lines reported to us and allocated these various statements in the same form that they reported them to us. (Tes. 1377-1381.)

I am not familiar with the practical arrangement, and while the map shows them serving a plant there they might not handle a ton of fertilizer out of there.

"Mr. Cotterill:

"Q. Mr. Wilson, it appears that the Savannah & Atlanta Railway is 147 miles long. So if it be a movement of imported traffic over that particular short line which may have caused the discrepancy in these extensions its [fol. 905] influence could only extent to distances up to 147 miles, of course. Now, these discrepancies in the extensions run through the entire exhibit, including distances up to 550 miles, but exceeds the length of any short line on your exhibit O. In other words, you have included in that statement G ranges of haul purporting to be single line hauls over short lines, which range of hauls is in excess of the maximum single line distance over any short line included on Exhibit O, all of which tends to the thought that perhaps you would like to re-examine the data which supports this particular exhibit and furnish the Commission with any corrected statement which may occur to you to be proper. Would you care to do that?

"A. Do I understand that is a request that we do that? That, of course, means we have to go back to each line that gave us the figures and get them to give us a restatement so as work that out.

"Commissioner Eastman: There is apparently something to explain here, and the Commission would be glad for the explanation.

"Mr. Cotterill: I rather thought so. The amount is not so very large, Mr. Commissioner, but as a multiplication of the tonnage by the proposed rates applicable to short lines does not produce the same extension in any case, the thought naturally is that it may be due to some imported material over some particular short line. But we run into a blind alley there because there is no short line anywhere that has a distance equal to 550 miles, and the suggestion that the Savanna- & Atlanta may be the line.

"Commissioner Eastman: Unless you have some explanation to offer of that apparent discrepancy at this time, we would like to know what the explanation is.

"Mr. Gwathmey: Mr. Commissioner, we will consider the matter and before this hearing is over we can offer some explanation. If we cannot, we will endeavor to get up the data in such form as the Commission wants it. [fol. 906] "Mr. McGehee: It will take some little time to get that, but it can be done." (Tes. 1381-83.)

In the transmission of those data to the Commission the carriers made what they call an estimate hurriedly prepared as to the revenue consequence should the freight rate revision on fertilizer in the south take the form of a uniform application of the existing schedule in the State of Alabama. As to how the estimate was made: That is item 6, and with the explanatory statement. We applied to the tonnages shown on statements A, B, G and H the Alabama scale, what they call the Alabama scale. In order to do that it was necessary for us to deduct from statement A, which includes all single line deliveries by both trunk and short line carriers in the territory, the single line tonnages reported on sheet G, which was the single line short line deliveries, while we assumed the remainder would be approximately the single line trunk line deliveries. We applied to that remainder the single line trunk line scale for Alabama. We applied to the tonnage on G the short

line single line Alabama scale. Then we treated statement B and statement H in the same manner, statement B being the consolidation of the joint hauls for trunk line and short line, and we deducted the joint line reported by short lines on H from B, and the remainder would be approximately the deliveries of joint haul traffic by trunk line.

"By Mr. Cotterill:

"Q. Have you preserved and brought with you sufficient of your working sheets in the making of those computations to be able to indicate the dollars of revenue consequence resulting from the application of the Alabama scale to the movements of fertilizer materials over trunk lines alone, as distinguished from its effect upon short lines?

"A. We were able to work that out only in the case of the Atlantic Coast Line, Seaboard Air Line and Southern Railway. I have those figures."

We deducted from statements A and B the short line [fol. 907] tonnage and then applied our standard line rates to the remainder, but I understood he wanted to know about the results on certain of the trunk lines.

"By Mr. Cotterill:

"Q. All of the trunk lines.

"A. All right. I did not bring my working sheet showing those separate figures."

I haven't those details. As to the figures shown opposite Item 6 in the explanatory statement that embraces the revenue computation resulting from the application of the Alabama scale to both the trunk lines and short lines. Our conclusion is that based upon that method of computation there would ensue a revenue decrease of some $636,000. I am not able from memory to indicate approximately what proportion of that decrease would be attributable to the effect of the Alabama rates upon the trunk lines as distinguished from the short lines. I cannot answer from memory whether the larger part of that estimated decrease is attributable to the effect of the Alabama structure upon the movements of fertilizer over short lines. I haven't any figures here on that and I cannot re-

call just how that worked out. That has never been given. In our rough sheets is the only place it would appear.

In the making of the entire traffic test, as affecting the importation of certain fertilizer materials, the revenue results were arrived at not by the use of the mileage scale in all instances as applied to the short line distance but by the use of certain figures which were furnished us by the traffic department as representing a measure of port equalization. This item 6 made no allowance for port equalization on import material. (Tes. 1383-87.)

A witness to follow me will introduce evidence as to the figures or bases employed in the making of the figures governing the port equalization.

Running through practically all of the sheets, it will appear that if the tonnage is to be multiplied by the rate [fol. 908] scales alone the extension would differ from the amounts shown as extensions, but in the greater number of cases I attribute that, of course, to the employment of special rates on the imported movements.

I want to make an explanation with reference to one of the questions asked me this morning in connection with the traffic test. The question that was asked by Mr. Cotterill was as to the apparent discrepancy on statement G when you attempted to apply the Royster scale plus 50 cents to the tonnage and found your figure varied in every case. I suggested this morning that that might be due to the differences in rates on import materials, but after we left the meeting and after thinking it over it occurred to me that the greatest difference in that in many instances was caused by the short line meeting the rates between certain points common to both, and that caused that difference. For instance, from Boston to Alabama; the Georgia Northern did haul a good deal of tonnage, but, as a matter of fact, they would have to meet the short line rate of the Atlantic Coast Line. There were numerous instances like that. (Tes. 1387-1390.)

As to statement G embracing distances of as much as 550 miles when apparently none of the short lines have single line mileage of that amount. That on its face does not look right, but we simply took the figures reported to us by the various reporting lines. The Georgia & Florida is a considerable distance from Augusta to Madison. That is the entire distance, 450 miles, of the Georgia & Florida.

But they would not have any single line haul of that distance. The longest haul they would have would be from Augusta to Madison, which I think is about 250 or 260 miles. In the matter of the entire test where a movement occurred over a longer route than a possible shorter route the rerouting was on the basis of the competitive rate in every case. And that did happen in a great many instances, and that accounts for the difference. It gives a lower revenue than you can work by figuring your scale. [fol. 909] That only existed where there was an actual movement via the short line, and it became necessary to meet the joint line rate, either single or joint line.

"Q. Take the case of a movement over a trunk line circuitous route; was that movement shown for its actual distance or was the distance over the route which controlled the rate shown?

"A. I believe the traffic witness has already brought in something on that, hasn't he, Mr. Gwathmey? Didn't they use the workable routes? Wasn't that used?

"Commissioner Eastman: I mean taking your statement A.

"Mr. McGehee: They used the rate-making route, Mr. Commissioner.

"The Witness: The reason I asked that is because the mileage in all instances was furnished us by the traffic committee, and we applied it to whatever rates they gave us."

"By Commissioner Eastman:

"Q. Mr. Wilson, I would be glad if you can check up the long distance and say how it is explained.

"A. Yes, I will be glad to do so. But I take it it will not be necessary to go any further in regard to Exhibit G since I have made that additional explanation."

"Mr. Cotterill: Mr. Commissioner, my recollection has now been refreshed concerning the omission to include the inbound and outbound assembly and distribution costs. I regret we all overlooked the obligation to furnish that, and I am sure it can be obtained and prepared very quickly, and if I may have the privilege, we will transmit it to the Commission and counsel within whatever time limit you prescribe.

"Commissioner Eastman: Is ten days sufficient?
"Mr. Cotterill: Yes.
"Commissioner Eastman: Very well." (Tes. 1390-93.)

[fol. 910] JOHN WILSON was thereupon called as a witness in behalf of the carriers and, having been first duly sworn, testified as follows:

My name is John Wilson, residence Sumpter, S. C., and I am engaged in farming. I am also president of a short line railroad, the Northwestern of South Carolina, about 81 miles long. I have one farm in Clarendon County and one in Lee County, S. C. I have around 3,000 acres under cultivation. I plant about from 1,100 to 1,200 acres in cotton, probably 800 acres in corn, and the rest of it in small grain. On the cotton I use an average of 800 pounds of fertilizer to an acre. That is a mixture of 400 pounds 16 per cent acid phosphate, 100 pounds of kanite, 100 pounds of cotton seed meal or the same amount of fish scrap and 150 pounds of nitrate of soda; a total of 800 pounds to the acre, which is my average for cotton. I have lived many years in that locality and I am familiar with the general practices of the farmers in my section. The average application per acre is around 300 pounds. The majority of that is the commercial mixture known as 8-3-3. The smaller farmer ordinarily uses the commercial mixture, but the share cropper, where he uses his own fertilizer, uses a small amount of this mixture. I purchase my fertilizer sometimes in bulk, and mostly in carload lots, stacked and packed under the South Carolina law. During the last season I paid for acid phosphate $13.50 a ton; for kanite, $10 a ton; for nitrate of soda, $53 a ton; for fish scrap, $56 a ton; for cottonseed meal, $35 a ton. I do my own mixing. On a small farm I got late in the season I had to buy a small amount of mixed fertilizer. The prices I quoted are f. o. b. port, Charleston in this case. The prices for 1924 are higher than for 1923. 1922-23 the acid was $10.50 per ton; kanite $9.50; nitrate of soda, $48; fish scrap $49; cotton seed meal, $34. For 1925-26, the acid was $14.50; kanite $11; nitrate of soda $54.80; fish scrap $58.50, cotton seed meal, $37. (Tes. 1394-97.)

Those prices were for fertilizer materials. The figures

[fol. 911] for the mixed fertilizer for this season are: I have the 8-3-3 and 8-4-4, the two standards in that section. For 1922-23 the 8-3-3 was $20, and for 1923-24 it was $22.50. For 1924-25 it was $25, and 1925-26, $27. The 8-4-4 in the season of 1922-23 was $22.50; for the season of 1923-24, $26; for the season of 1924-25, $28.50, and for the season of 1925-26, $32. I haven't bought any of those mixed goods for this season. The price I got from a fertilizer broker on last Friday. These prices which I quoted are the spot cash prices. The credit prices have been from $5 per ton to $12.50 per ton higher than the spot cash prices. Farmers buying on credit in my section generally get their fertilizer during the latter part of February or the early part of March and those notes are payable October 15th. Covering that period there is an increase of prices of from $5 to $12.50, where the sales are made on credit. They do not pay at the prices prevailing in October. I should say they pay this advance on the price prevailing in March. As I understand it, a man goes down there in March and makes his arrangements to have his fertilizer shipped on credit, and he gives his note payable October 15th at the higher price from $5 to $12.50 above the cash price. In other words he pays from $5 to $12 a ton more for the use of the fertilizer for 6 months—per ton. That difference is added to the March price. The situation just described had particular reference to the 1923-1924 and 1924-25 seasons. There has always been some difference between the cash price and the credit price, ever since I can recall anything about the fertilizer business. The figures given refer to 1923-1924 and 1924-25.

There was no change in the freight rate between the two seasons. All the fertilizer people had the same price on these different commodities. They seemed to have an agreement or combine to maintain prices. I went to Charleston in the early part of the season, and that was the information I got from the different fertilizer people, that they had agreed on a price and they were going to stock to it. (Tes. 1397-1400.)

[fol. 912] That is my personal information based upon the experience I have had in the matter. I would consider the average production of cotton per acre in my territory about a third of a bale per acre. I think that is fairly rep-

resentative for my whole section. Before the advent of the boll weevil they made more, but since that time that has been approximately the average yield. Last year it was less than that; less than one-quarter. The price during 1925 has been slightly less on an average for 1924. I cannot tell you what the average for the past number of years has been. Ten years ago it was worth 10¢; in 1924 it went to 42¢, and now it is worth 20¢. It would be a pretty hard matter to figure out what the average has been. In that period of 10 years it ranged from as low as 10¢ to as high as 42¢.

I use fertilizer on other crops than cotton, but not the same amount. On corn I use 500 pounds to the acre, a mixture of either 200 pounds of cotton seed meal or fish scrap, 100 pounds of acid, 100 pounds of kanite and 100 pounds of soda. The smaller farmer fertilizes his corn about 200 pounds of the 8-3-3 or 8-4-4, on an average. Sometimes they apply a little additional dressing of nitrate of soda running 50 to 75 pounds to the acre. In 1925 the actual cost per acre of the fertilizer used in the production of cotton was $11.62 per acre, and of this the freight cost was $1.09 per acre, or $109 for 100 acres. 10% reduction on fertilizer would amount to $10.90 on 100 acres of cotton to the farmer.

The majority of farmers in my section buy commercial fertilizer, that is the majority in numbers; the majority in acreage do their own mixing. The majority of the acreage planted in my section is fertilized with fertilizer that is mixed by the owner. That is true from the standpoint of acreage because of the fact that certain farmers have large acreages, and they are the ones who buy the materials and do their own mixing. It is cheaper where the farmer does his own mixing. He saves anywhere from $2.50 to $5 and $6 a ton by doing his own mixing. They save fertilizer because then they can make just the formula [fol. 913] they want for the different characters of soil that they have. (Tes. 1400-03.)

I have talked to a good many farmers and they are all opposed to increasing the carload minimum from 15 to 20 tons. The smaller farmers club together and buy. There are very few of the smaller farmers who use as much as

a carload, and they have a kind of community affair of it and two or three of them go in together and buy a minimum car.

Cross-examination:

I am president of the Northwestern of South Carolina R. R. I own 50% of it; there are 4 or 5 other stockholders. None of it is owned by the Atlantic Coast Line Railroad Co. I don't know whether any of it is owned by the Atlantic Coast Line Co. Mr. Henry Walters, the last I heard, owned some. I couldn't tell you if it is generally regarded as a Coast Line subsidiary; we don't get any favors of them, I know. I have been actively engaged in agricultural pursuits for 10 or 12 years. I think in some instances the prices we are now paying for fertilizer are about the same as they were before the war, and in others a little higher. Kanite is probably a little lower. I buy for cash. I had to borrow the money to do it, but I paid cash. At the beginning of the season, particularly as to 1923 or 1924, it was true that the prices of fertilizer were more or less demoralized and different for different people in the same town, different as between towns, different as between different companies, and more or less in a chaotic condition. This year I am, by the use of fertilizer, making about 2/5th of a bale an acre—I mean 3/5ths. I attribute that, largely, to the more extensive and intensive use of fertilizer. We plant some oats and wheat. I did not testify before this Commission some time back in a proceeding involving grain rates into the South; I did not participate in what is known as the Grain rate investigation. (Tes. 1403-06.)

Redirect examination:

I buy from a thousand to 1,300 tons of fertilizer a year; that is for the last 3 or 4 years when I had an extra farm on my hands.

[fol. 914] Recross-examination:

In the making of fertilizer by the larger farmer in my section it is true that my choice of materials was representative of the practice pretty generaly in that section. We

buy our cotton seed meal in sacks for January and February delivery. We generally buy in October as we get it generally at a lower price. Once or twice it has been the other way. This being October, I have already bought my meal, and most of my other fertilizer, for next year. The price I quoted on cotton seed meal is f. o. b. shipping point.

On what we used on my cotton crop this year, a 10% reduction in freight rates would be $109 on 100 acres. That is based upon my use of fertilizer. I have here that it would amount to $4.10 on the average used in my section. I have about 1,100 acres in cotton. On the cotton part of it that would be about $120 saving to me; on the other part I would say that a 10% reduction would amount to between $175 and $200 a hundred acres to me. One of my farms is not located on my own railroad; the larger one is. There isn't much difference in the size of the two. My fertilizer supply comes to me over my own railroad; half of what I gain as a farmer by the reduction in rates would come out of my revenue as a railroad man. Up to last year I found my farm profitable, during the last few years. Last year I lost about $20,000. We had a very wet season and there were no crops made in that section. We are going to break even and pay up some of my old debts this year. The saving of $200 in freight charges would be a small fraction of what I figure my profits this year.

There has been a difference of from $5 to $12.50 a ton between the cash price and the price of fertilizer payable in the following October. I think that difference has been materially increased in recent years. There has always been some difference between cash prices and credit prices, but not so great until the last couple of years. (Tes. 1406-1410.)

I think anyone buying the amount of fertilizer I do would [fol. 915] get it at the same price if he started at the same time to buy it before the prices go up. We have no organization in my State similar to the Farm Bureau Federation that I know of. I know of no organization which the farmers belong to through which as a medium they can buy their fertilizer in a cooperative way. Our cooperative people do not handle the fertilizer, so far as I know. I have no personal knowledge of such organizations in other

Southern States, but I understand there are such. I think that such organizations could effect material economies or savings in purchasing fertilizer; I don't see why not. I do not know whether that is in effect in a good many other states. To a great extent arrangements are being made through the banks to pay for the fertilizer and save the difference between the cash price and the fall price, and a great many of the banks in my territory are financing and handling the fertilizer for the reliable small farmers. That is becoming much more a practice since this difference between the cash price and the fall price is widening in the last couple of years.

I testified that the farmers want the minimum weight to remain at 15 tons instead of being increased to 20. If the farmers knew that there probably would be some saving to them in the net freight charges by buying in larger quantities, they naturally would be in favor of a higher minimum; but the farmers say that fertilizer moves during a season when the roads are bad, and the average haul is 7 or 8 miles, and it is about all they can do to unload a minimum car now in the free time where three or four or five of them club together to buy a small carload, and if they had a larger car it would naturally take longer to unload it and they would probably be eating up in demurrage more than they would save in this freight rate.

[fol. 916] "Q. But wouldn't the disposition be to effect a small saving by getting one or two more additional farmers to go into this club and not any one man have to take a larger quantity, but they would bring in one or two additional farmers and be able to use a 20-ton car instead of a 15-ton car?

"A. I think that would be a pretty hard proposition to do in several communities, especially in sparsely settled communities, especially when one fellow in that neighborhood would think he could haul better from another station. And I think it would be difficult to get more than four or five to club together and order a car."

I don't think it is a pretty general practice during bad weather and bad roads for these farmers to make arrangements in these towns for a place to store their fertilizer

and go into town and unload the car and then await a favorable opportunity to haul it from the place; most of that fertilizer goes to blind sidings, where there is no station or town, and to places where there is no agent. The majority of it goes out of the towns. A good deal of it goes to the blind sidings where there are no agents, and a good deal to the small towns that have no storage facilities.

This short line railroad of which I am president is about 81 miles long. It runs from Sumter to Camden, and from Sumter to Wilson's Mill. One of my farms is located on the line of this road; the other is on the Coast Line.

I do not operate a cottonseed oil mill. I buy that from the Southern Cotton Oil Company. (Tes. 1410-1415.)

(Witness excused.)

[fol. 917] T. H. PERSONS was called as a witness in behalf of the carriers and, having been first duly sworn, testified as follows:

Direct examination:

My name is T. H. Persons. I am likewise connected with a short line railroad—unfortunately. Our road is only 7 miles long.

"Q. The question was asked Mr. Wilson if his railroad was a subsidiary of the Coast Line. Does any trunk line own any interest whatsoever in your railroad?

"A. I am sorry I haven't such a partner."

I appeared here to testify at the request of Mr. Strayer of the Short Line Association. I am a member of the American Short Line Association, and I come on a request from Mr. Strayer.

I wish to state that my brother, A. P., and myself are partners in all business matters, and he and I together have farms there, and other possessions.

We own something over 5,000 acres of land in Talbot County, Georgia.

I am also president of one of the local banks there and am engaged in the mercantile business. And I wish to explain that that is a very small country town and country community and those different interests are small interests. You cannot increase your volume of business in a small community without going out into various lines. Our town is only about 1,200 in population, and our county is an agricultural county, and in order to increase the volume of business we have been forced to go into several lines, but in a small way.

Concerning what has been the prevailing difference in the [fol. 918] cash price in our section and the credit price. I have been in business, my brother and myself, probably 40 years, 40 years the first of September. I have a son now who looks after the farming interest more closely than I do and keeps up with the prices, but I superintend it all in general. But I know this, just as I heard Mr. Wilson testify, that they make a great difference between the credit price and the cash price. And why I am so well aware of it is as a little banker the farmer comes to me on account of the difference which he is charged between cash and credit. And it is just a thing that any business man or farmer would do—not pay such a difference. They feel that he is not worthy of credit, and I have construed it that they did not want to sell it on credit, and it was their way of getting out of selling it on credit at all, I understand, that was responsible for it. I have acted accordingly. I have gone further and stated that one reason they won't credit you. I have been in the business there, the supply business, for 40 years, I have taken a great many mortgages on the farms, and our conditions there are different, and instead of estimating by acreage we estimate so much per plow or per mule in the use of fertilizer.

And I tell them that it has been quite an annoyance to me in a banking way. I have supplied them at the mercantile store and then they come there and want to buy guano. And I have tried to get some of the agents there to ask them if they wouldn't sell them and take a mortgage on the crops; and they won't do that. I told the farmers the reason they don't do that is that you are afraid your client won't make cotton enough to pay for it. Now, those

[fol. 919] are facts. And I have two brothers selling guano and I talk to them the same way. The average farmer in our section cannot pay cash for his fertilizer. As I say, I have been there for 40 years. That is my business. He has to get the money somewhere to pay for it. And I don't feel that the supply men are toting fair with us in trying to dump the whole thing on us.

I have bought fertilizer for 40 years. I have never bought a ton of fertilizer only at a delivered price, and the question of freight did not enter into it with me, and it does not enter into it with the farmer. They fix that. The fertilizer people would sell that guano at my station at the delivered price, and I sell it to the farmer the same way.

Now, I want to say this. The panic of 1873 and the cotton caterpillar at that time took me out of school and put me to plowing on the farm, and my every sympathy is with the farmer; and if I felt that the farmer was going to get any of this benefit in my section I would be glad to make any concessions on my little road to give it to him. But I don't believe he would get any of the benefits. As I say, it is sold delivered. Furthermore, after that length of time—if you will excuse me, I am 65 years old and have had some experience, and I have thought of this thing a great deal, and I have studied it. There is a certain amount of plant food in fertilizer per ton, and I believe if these men would put the same amount of plant food into a thousand pounds of fertilizer that they are putting into two thousand they would give us a better fertilizer and you [fol. 920] would cut your freight rate in two. That is my honest opinion. If you would just simply use less filler and put that same plant food into a thousand pounds of fertilizer that you put into two thousand pounds you would reduce your freight rate half then. I do not mix my own fertilizer. I buy all of my fertilizer ready mixed.

I spoke of the farmers in my section and said that they would use so much fertilizer to the plow, one-mule farm. That is the basis.

A farmer is supposed to cultivate about 30 acres with one mule, of ordinary corn and cotton. I feel few of them cultivate that. They guess at the acreage in my section.

Prior to the advent of the boll weevil we felt we could

furnish the farmer two tons per mule. (Testimony 1415-20.)

Cross-examination:

I understand the fertilizer prices are influenced by the quantity of plant food in a ton. Certainly.

If the percentage of plant food to the ton of fertilizer be increased it would mean, of course, a higher price. As to whether the farmers in my section are prepared now to stand for what is called the more high grade, and, we will call it, concentrated fertilizer: The more intelligent farmers would, and the others are followers. I am glad to say that the fertilizer companies and all the State agencies are constantly educating the farmers to take the higher grade goods. I remember something like eight or ten years ago what you termed the 8-2-2 was greatly used. It is not used [fol. 921] as much. I think your trend is in the right direction, if you will pursue it further.

I would think the fertilizer company would have no objection to go as far as the farmers will go with them.

The larger operators do their own mixing and under those circumstances they can make it as concentrated as they desire. I paid very close attention to Mr. Wilson's evidence here. I didn't know him personally before I came here. For instance here is the disadvantage that the small farmer is at. He can not buy those ingredients in bulk in sufficient quantities to mix the quantity he needs. Mr. Wilson is in better position. He can buy those ingredients in carloads and do his own mixing. But what can a two-horse farmer do with that?

I have 5,000 acres, but I have farmed it largely on the tenant system. What we mean by tenant system is this. We put a tenant on there and go shares with him and give him half of what he makes. I do not do my own farming. The tenant system largely prevails in my section. They prefer to have it that way.

"By Mr. Cotterill:

"Q. It is a fact, is it not, that following the advent of the boll weevil in that section and the discouraging situations which followed that as to most of your farms you just charged your tenants no rent at all and allowed them to stay on the land?

"A. I allowed them to remain there. In fact, I was a great sufferer under the boll weevil conditions, and I stood to the saw and tried to continue, but I found it a losing [fol. 922] game. We lost more than $25,000 of my own money but did not want to lose any of anybody else's, and I sort of slacked up, and I have allowed those tenants to remain and have helped them the best I could. My theory is I am trying to induce my people to diversify more. I went to Lexington, Ky., and bought a couple of registered jacks and tried to get them to raise mules. I have bought registered Hereford cattle and am trying to raise bulls, and I put out peach orchards. We have to diversify."

As I admitted, I have had to keep a little old 7-mile railroad run-ing for the last eight or ten years. And, brother, that keeps my hands full. I have a couple of sons, and I told them that I am going to try to turn over to them everything that is disagreeable and unprofitable, and I am trying to find the easiest job I can for myself—I am 65 years old now—without mixing any fertilizer. I have been living down there in Talbotton for some years. My sons are the fourth generation. In the business house we are doing business in Talbotton now in the fourth generation. I regret to say that I do not feel that we have made much advancement as to the control of the boll weevil.

I have made this statement frequently on the streets there. You can take 25 farmers in my country, white farmers who have grown the best crops in the county, and if you ask the farmer his method, especially as to this poisoning, I will venture to say that 50 per cent of them will tell you they made no fight on the boll weevil whatever—and of those who made the best crops. Now, I would [fol. 923] be a very simple man if I did not want to know what is best, and I have given it study. I have lost money at it. I have spent my life right there. As I said, my sons are the fourth generation of my family occupying one of the buildings in Talbotton now. I have the well being of those people at heart and my sympathies are with them, and I have been trying in every way I could to solve this question, but I don't see that the boll weevil situation is solved yet. I know a good farmer down there by the name of W. N. McGehee at Talbotton. He farms there. In other words, I think he practices law and keeps a tenant going down there.

"Mr. McGehee: That is correct." (Tes. 1420-24.)

JAMES MENZIES was called as a witness on behalf of the carriers in rebuttal and, having been previously sworn, testified as follows:

Direct examination:

I have testified previously in this proceeding.

I am prepared to submit at this time on behalf of the carriers their proposals as to the adjustment on the imported fertilizer material rates from the various South Atlantic and Gulf ports. I have these exhibits to file now, if agreeable.

(The document referred to was received in evidence and marked "Carriers' Exhibit No. 494, witness Menzies.")

I will file my exhibit 494 which shows the rates the carriers have tentatively checked in on imported fertilizer materials from Virginia, South Atlantic and Gulf ports, to fertilizer manufacturing points in the south, although it may later be found necessary to make changes in some of these figures. Where no rates are shown in the statement no [fol. 924] specific import rates have been checked in, and in those instances the scale will apply. These figures were used in re-rating the imported fertilizer material shipments included in the revenue test.

The figures were arrived at by the use of carriers' proposed scale from the rate making port, except in a few instances where, because of the fourth section, the rate to the more distant point was observed as maximum. Rates from other ports were either equalized with the rate making port or checked in with relation thereto.

It will be observed that no rates are proposed from the South Atlantic ports to the Mississippi Valley or from the Gulf ports to Carolina territory. The much shorter distance, and consequently lower rates, from the Gulf ports to Mississippi Valley, for instance, has in the past controlled the movement, and, having handled no shipments from the South Atlantic ports to that territory in the past, we assume there will be no appreciable movement in future.

This is likewise true with respect to the movement from Gulf ports to Carolina territory.

To Abbeville, Ala., which is the first point shown on the exhibit, the rate from Brunswick is made on the scale, and the same rate applied from Jacksonville and Savannah. The Charleston rate was made 75 cents higher. This results in rate from Charleston 27 cents lower than the scale and 15 cents lower than the present rate. The scale has been applied from Pensacola and Mobile, and rates from Gulfport and New Orleans made 56 cents per ton higher, which is the difference in the proposed scale, Gulfport, Miss., over Mobile, Ala., to Montgomery, Ala.

[fol. 925] That should be shown as Gulfport, Miss. It reads Gulfport, Ala.

This results in rate 12 cents lower than the scale from Gulfport and 45 cents lower than the scale from New Orleans, and 159 and 135 cents, respectively, lower than the present rates.

To Aiken, S. C., we propose to apply the scale from Charleston and Savannah, while from Wilmington, Brunswick, and Jacksonville we have made the rate the same as Augusta. This results in rate from Wilmington 35 cents lower than the scale and 47 cents lower than the present rate; from Brunswick 33 cents lower than the scale and 56 cents lower than the present rate; and from Jacksonville 6 cents lower than both the scale and the present rate, the present rate being the same as the scale.

To Chattanooga, the rates from Brunswick and Mobile are on the scale, and the same rate applied from Charleston, Savannah, Jacksonville, Pensacola, Gulfport and New Orleans. The rate from Wilmington was made 75 cents higher than Charleston but 28 cents less than the scale. From Norfolk the rates is the same as the rate to Nashville.

To Atlanta the scale has been used from Brunswick, and the same rate applied from Jacksonville, Savannah and Charleston, Wilmington made 50 cents higher. From Gulfport and New Orleans to Atlanta, the proposed rate is the same as the proposed rate from these ports to Chattanooga, the distances being approximately the same. From Mobile and Pensacola the proposed rates to Atlanta were made 50 [fol. 926] cents less than the proposed rate from Gulfport and New Orleans.

To Birmingham the scale was used from Savannah and Brunswick, and the same rate applied from Charleston and Jacksonville. The scale was likewise used from Pensacola and Mobile and the rate from Gulfport and New Orleans made 50 cents per ton higher than Mobile.

To Greenwood, S. C., the rate from Charleston was made on the scale, and the same rate applied from Savannah. Wilmington was made 25 cents over Charleston, Brunswick 57 cents over Savannah (which is the difference at Columbia), and Jacksonville 25 cents over Brunswick.

As representative of the Mississippi Valley territory, I call attention to Jackson, Miss., to which point the rate from Gulfport is made 315 cents, which is the scale for the distance. It is proposed to apply this rate also from Mobile and New Orleans. From Pensacola, the proposed rate is 371 cents, which is made 56 cents higher than the proposed rate from Mobile.

To Jackson, Tenn., the proposed rate from Mobile, Gulfport and New Orleans is 484 cents, this being carriers' proposed scale for the distance from Mobile to Jackson with New Orleans and Gulfport made the same as Mobile. From Pensacola the proposed rate is 540 cents, which is 56 cents higher than proposed from Mobile.

To Montgomery, Ala., the rate from Savannah was made on the scale and the same figure applied from Brunswick and Jacksonville, Charleston being made 50 cents over Savannah. The scale was applied from Pensacola, and [fol. 927] Mobile made the same, with rates from Gulfport and New Orleans 56 cents higher than Mobile.

These are illustrative, and rates to other points were worked out on the same general plan.

This matter was fully discussed when I gave my direct testimony, and the rates are worked up on the theory then explained. (Tes. 1425-29.)

Taking the testimony of Professor Davis as an example, it was stated that the total consumption of fertilizer in the south was 4,700,000 tons, and based upon the increased prices that he gave, the 1925 over 1924—The prices that Dr. Davis gave, which would average not less than $4 per ton, the increased cost to the farmer in the price of fertilizer, 1925 over 1924, would be $18,000,000. Other figures were given as to the increase in price of fertilizer that were

of very much greater — than those figures that Dr. Davis gave. In fact, as I testified in this case, the price in 1924 for 8-3-3 goods was as low as $17.50 per ton, and those in 1925 to about $25 per ton. But I merely made the calculation based upon Prof. Davis' figures.

In that calculation I have not included any additional cost that might accrue in connection with sales made on credit and higher prices where credit was granted. Not knowing the extent to which credit was extended I could not answer that question definitely. The increase in price on account of the extension of credit was at times at least as much as $10 per ton.

At the time when the rates proposed in this case were determined upon by the carriers, necessarily we had to take into consideration the revenue effect. We did not have any definite notion at that time as to what the revenue effect [fol. 928] would be of those rates. Of course, we knew that the Royster scale applied to all the traffic would mean a substantial increase in revenue. We knew that. But we had been fighting the State Railroad Commissions, or some of them, for 30 years on this question of low rates on fertilizer, and we felt we were entitled to at least the Royster scale. We had a scale higher than the Royster scale in effect at one time, and that was twice reduced by the Interstate Commerce Commission, and the third Royster scale was finally established with the information on the part of the Commission itself that we were to base any future applications for revision of fertilizer rates on that scale, and a statement to that effect is made in the record. I don't know why fertlizer should be looked upon as a commodity which should receive special attention on the part of the State Commissions, except that it is regarded as a political proposition, apparently—That is my judgment—when, in fact, if a reduction were made in these fertilizer rates, that reduction, in addition to the $18,000,000 we have already given to the fertilizer factories, with this additional million or so would also go there. I do not believe that the farmer would get any advantage at all. In fact, I have recently been advised—and I think Mr. Wilson talked about the matter here today—that the price for 1925-26 has already been established at a dollar a ton higher than 1925.

I think the third Royster scale was established at a proper level of the rates on fertilizer regardless of the revenue effect. We did realize that it would increase the [fol. 929] revenue of the carriers if applied uniformly throughout the south. We were perfectly well advised as to that.

I never made any definite calculation as to what the increase might be, because I was not familiar with the territories through which—I am explaining now that until this fertilizer question came up I did not have the knowledge which I now have with regard to the Mississippi Valley, for instance, and points beyond our own rails, but I knew that there would be a substantial increase to points on our own rails if the Royster scale were applied throughout. [fol. 930] I am not in any way surprised at the result shown by the traffic test. It does not change my view in any way as to what a proper level of the rates on fertilizer should be. I think that the Royster scale is a reasonable scale of rates for the railroads and for the shippers, and the question has been tried our on five or six occasions, and even the Interstate Commerce Commission has so ruled. (Tes. 1429-33.)

Cross-examination:

Prior to the fall of 1925, I do not recall when the Georgia carriers applied to the Georgia Commission for a reduction of the fertilizer rates.

I made a memorandum of the changes which have been made in the rates in Georgia by the State Railroad Commission for some considerable time in the past, and I think I can get it now and will show it to you. You see I have been in this situation probably a great deal longer than you have. And that makes quite a difference, you know. I remember thirty years ago fighting this same case, fighting the fertilizer question, before the Georgia Commission. And in those days, as today, it seemed to be a great political question as to whether the dear farmer should be protected.

"By Mr. Patterson:

"Q. Just what do you mean when you say it is a political question.

"A. You want me to be entirely frank about it?
"Q. I do.
"A. I think it is regarded as a vote-getter.
"Q. By State Commissions?
"A. Well, by anybody; anybody who wants office I think generally tackles fertilizer as the first commodity that ought to be reduced."

I do not think State Commissions as a rule would make reductions in the rates on fertilizer in order to influence the [fol. 931] farmers to vote for their re-election. I think there are exceptions though.

"Q. Then it would be the rule, and they you say there are exceptions?
"A. Well, I just meant the opposite, if that is the way you interpreted my language."

I do not htink any reduction in fertilizer rates would reach the farmer. I have heard of the Farm Bureau Federation. It was mentioned at the Montgomery hearing. I heard the testimony of Mr. O'Neil, who was the president of that organization, to the effect that they are now purchasing for their members enormous quantities of fertilizer and fertilizer materials direct and furnishing it to them at the wholesale price.

"Q. Also that they have in the State of Alabama alone around 30,000 members at this time? Wouldn't any savings in freight be passed by that organization, which is purely a cooperative organization, directly to the farmer?
"A. If Mr. O'Neil said so, I will say yes. But I understand this organization of which you speak controls a limited part of the whole consumption of fertilizer in Alabama."

I don't know if the membership and its distribution of fertilizer is increasing very rapidly from year to year. I never heard before of a similar organization. There may be other organizations built on different lines, but I never heard of an organization as described by Mr. O'Neill. There is a National Farm Bureau Federation which I know of in a national way as representing the farmers throughout

the nation. In the south it has particularly to do with the marketing of cotton and with the purchase of fertilizer for use in producing cotton. I don't know if it is growing very rapidly in numbers and in the operation for the benefit of the farmers, but I think that is so, if it is for the benefit of the farmers. (Tes. 1432-36.)

[fol. 932] As to when the state of Alabama singled out fertilizer to reduce it in the last 30 years: I understood that reductions were made in 1905, 1907, another reduction in 1907, and in 1918 there was a revision. I suppose that is the revision made by the Federal authorities. That was an upward revision an increase. That was not made by the State Commission; it was made by the Federal authorities. There have been since 1897 ten changes in fertilizer rates, and I don't know of any other commodity that has gotten such treatment.

I cannot tell you how many changes were compelled by the Alabama State authorities, on fertilizer as separate from other commodities. As to whether prior to 1907 the Alabama Commission did not have any authority to make rates; purely advisory, just to use its persuasive powers. I have forgotten that was the case because we have heard so much from them since. I know in 1907 that fertilizer was included along with a list of over a hundred other commodities: The 110 commodity list, I know that our railroad put those rates in under agreement.

"By Mr. Patterson:

"Q. Has there been any other instance to your knowledge in which the Alabama authorities made any change in fertilizer rates except as matters of general revision?

"A. Well, I cannot answer as to that, Mr. Patterson, because I haven't the information before me, I just selected the data as to the changes in fertilizer rates.

"Mr. Gwathmey: My recollection is, Mr. Patterson, that at the first hearing a rather complete history was put in by Mr. Drescher showing the various changes made in Alabama. Frankly, I don't recall at the moment what the answer to your question is, but I think it will appear from that record."

Since the fall of 1921 the Georgia Commission has been looking toward a general revision of all rates within the State and has passed orders on several commodities be- [fol. 933] sides fertilizer, and all of those commodities—cotton seed, sugar, ground limestone among them—were increases for the carriers in Georgia. In some cases there were increases. I haven't a list of those commodities, so I cannot say that they all were increases, but we have secured some increases from the Georgia Commission on articles other than fertilizer. The fertilizer order that the Commission issued was rescinded, and today the rates that are in effect have been in effect for a good many years, subject, of course, to the increases and decreases.

"By Commissioner Eastman:

"Q. Mr. Menzies, Mr. Archer has given me a memorandum in regard to what was testified as to the revenue effect of these rates when they were put in. On page 327 of the record Mr. Shepherd, of the Illinois Central, stated that the underlying purpose of the revision was to secure uniformity and not additional revenue. On page 412 Mr. Chadwick, of the Mobile & Ohio, testified to the same effect. On pages 607 and 625 Mr. Ketner, of the Seaboard Air Line, also testified to the same effect and stated that he would be surprised if the Royster scale resulted in increased revenue. Does that refresh your recollection in any way as to what your Committee felt in regard to these rates when they determined upon them?

"A. I think, in the first place, Mr. Commissioner, that you will find that the Illinois Central testified to the effect that they desired the Royster scale in Mississippi. Now, we know very well that the Royster scale applied to Mississippi would quite considerably increase their revenue in Mississippi, because Mississippi has a line of rates that is extremely low. They were put in, according to my information, in the first place, as missionary rates, and these missionary rates have not brought about any general use of fertilizer. Mississippi does not consume anything like the quantity of fertilizer that other States do." (Tes. 1436-40.)

[fol. 934] "Mr. Gwathmey: As to Mr. Ketner's statement, I do not recall that, but I assume if he made that statement that he was talking about the Seaboard Air Line revenue, Mr. Commissioner, with reference particularly to the rates in Florida. I am unable to say without reviewing it whether his statement should be construed in the light of that fact; but it may not be inappropriate to bear that in mind—that all Mr. Ketner was testifying about was the situation in Florida. He was especially designated for that purpose.

"The Witness: That is true. I had forgotten that."

In connection with my Exhibit No. 494 there do not appear to be any destinations in North Carolina included in that exhibit, which leaves the record silent as to the degree of port equalization which might be in the minds of the carriers as reasonable in the case of shipments from the South Atlantic and Virginia ports to North Carolina. I don't know why North Carolina was not mentioned in this statement except for the reason probably that Wilmington generally speaking, is the nearest port and the rates should be made on the scale. Of course, the accounting departments would use the Royster scale if no other were furnished, and the Royster scale would apply through Wilmington to practically the great bulk of the State. There might be some points nearer to Norfolk than to Wilmington.

I should say as the Royster scale has been fixed by the Interstate Commerce Commission on fertilizer from Charleston and from Norfolk that the Royster scale would also apply on these imported fertilizer materials.

"Q. Then, that brings us specifically to the question in the minds of the carriers, whether this system of port equalization should be indulged as to all of the Southern [fol. 935] States except North Carolina, and that as to North Carolina the full distance basis, according to your thought, should be applicable from each of the competing ports.

"A. If Wilmington is the nearest port, of course, that is the basis to be applied generally, and there is no discrimination there.

"Q. That is entirely clear; but is it the thought of the carriers that the distance scale should likewise be charged from Norfolk into North Carolina and from Charleston into North Carolina?

"A. I should say so without going into the matter thoroughly. Of course, there are some points in North Carolina that are as near to Norfolk as to Wilmington, and therefore Norfolk would get the advantage of that shorter distance rate."

If there is anything wrong in the proposed adjustment from Norfolk as compared with Wilmington to points in North Carolina, of course, we will be very willing to consider a revision. Charleston would come in there too. And Charleston already has the same basis of rates as Wilmington, on the Royster scale on fertilizer. And I assume—while I don't remember now, and I did not attend the last meeting at which these figures were worked out—what I have said about it is the governing point, that the Royster scale would take care of the rates from these three ports. In some cases the rates from Charleston might be less than from Wilmington to points in North Carolina, and that might likewise be true from Norfolk to points in North Carolina.

We would be very glad within a reasonable length of time to supplement this Exhibit 494 by giving the figures to the typical North Carolina destinations from Norfolk and Charleston and Wilmington and Savannah, just as I have done for the other Southern States. The first town here is Abbeville, Ala.; that should be Alabama. There is an Abbeville, S. C., and Louisiana, too.

[fol. 936] "Mr. Cotterill: Mr. Commissioner, it appears that in Exhibit No. 494 there are not contained any destinations in North Carolina at all, and it would seem as if there are also included from such list a number of important fertilizer manufacturing points in the interior. It seems to me as if it would be quite important to assure that this record contained a statement of the measure of port equalization set by the carriers as broad as the statement used by the accountants in the re-rating of the traffic, if that can be done conveniently. And we submit that as a reasonable

request and that the data be furnished and be regarded as supplemental to Exhibit No. 494.

"Mr. McGehee: Is it your understanding that the import rates are before the Commission in this proceeding?

"Mr. Cottrell: Yes, I understood so.

"Mr. McGehee: I understood otherwise.

"Mr. Cottrell: I never had any thought to the contrary.

"Examiner Archer: I suppose that they were. The order simply says rates, as I recall it now." (Tes. 1440-45.)

"Mr. Gwathmey: I would just like to say, Mr. Commissioner, with respect to the import rates, that whether they are or are not finally decided to be in this proceeding, it seems to me that it necessarily follows that the rates that the carrier has presented here are more or less of a tentative nature. I mean by that that they represent our best judgment as to what would probably be a fair relationship. But I have not supposed in any of that that the Commission in this particular case would undertake to work out this question of relationship as between every port. I think it is a matter that perhaps would be best adjusted at some later date anyway. However, with that remark I will say that there is no objection on our part to supplementing this Exhibit No. 494 in the manner asked by Mr. Cotterill." (Tes. 1448.)

[fol. 937] "Q. You had certain tonnage moving from, we will say, Charleston to a destination in South Carolina. Now, by what rule were you governed in your instructions to the accounting officers in determining whether that particular movement from Charleston to an interior destination in South Carolina was regarded as intrastate or as import?

"A. I will have to ask Mr. Wilson to explain that. But it would not make any difference whether it was an import or a domestic movement, because the rate from Charleston to South Carolina would be built on Charleston. I mean Charleston would be the nearest port. And the rate would be the same. It would be the same whether it was an import or a local movement." (Tes. 1450-51.)

When the South Carolina Commission made a reduction in the intrastate South Carolina rates the carriers have constantly declined to apply those changed rates to im-

ported material through Charleston, leaving our former intrastate rates in effect as import rates which were higher than the intrastate rates. As to what rule, in computing our present revenue for the purpose of this traffic test, we were governed in determining whether a particular movement was import or domestic: that would be a question of fact that we could prove to our own satisfaction, but as to how it was done I would be very glad if you will ask our accountants. I have really forgotton how it was handled.

As to the rates shown in this exhibit, they are not ship-side rates. (Tes. 1451-52.)

Redirect examination:

With reference to this matter of reductions in fertilizer rates made by the various State Railroad Commissions, it is the fact that within recent years, and, in fact, even subsequent to the time when this question as to the general investigation of fertilizer rates began to be agitated there have been a series of appearances before the various State Railroad Commissions by the fertilizer interests in an effort to obtain reductions in fertilizer rates. Reductions were ordered in the State of Alabama, and in the State of South [fol. 938] Carolina. And likewise in the State of Georgia.

It is a fact that in all of those proceedings there has been urged as a reason for such reductions the proposition that a reduction in fertilizer rates would operate to the advantage of the farmer. It is my recollection that in some instances, notably the order made by the railroad commission of South Carolina, the latest order, it was expressly stated in the order of the State Commission that the reductions were required because it was thought they would operate to the benefit of the farmer. It is my understanding that that is one of the grounds upon which the carriers took the matter into the Federal courts, claiming that the only power of the railroad commission was to order a reasonable rate and that it was without authority to make rates based upon considerations of that sort. So that whatever reason may have actuated the various State Commissioners in ordering the series of reductions in intrastate rates on

fertilizer, it is apparent, unquestionably, that the impression prevailed that a reduction in fertilizer rates would operate to the benefit of the farmers.

I did not attend the hearing before the Alabama Commission, but I read a great deal about it. Those who attended the hearings from our company, for instance, made reports about it. It may be that the Alabama Commission's action followed a proposal of the railroad to increase the rates in Alabama instead of a demand for a reduction; I cannot answer definitely.

"By Mr. Gwathmey:

"Q. Mr. Menzies, I understand, of course, that you have not personally attended these various hearings before the State Railroad Commissions. You have, however, I presume, reports of those hearings from your representatives who do attend?

"A. Yes, sir."

I don't know whether, in any of the proceedings before the State Railroad Commissions, there have been any [fol. 939] actual appearances of farmers themselves who have advocated reductions in the fertilizer rates. (Tes. 1452-55.)

(Witness excused.)

R. A. Chadwick was called as a witness in behalf of the carriers and, having been first duly sworn, testified as follows:

Direct examination:

I have an exhibit which consists of certain tabulations, the statement dealing specifically with 4th section relief desired by the Mobile & Ohio Railroad.

(The document referred to was received in evidence and marked "Carriers' Exhibit No. 495, witness Chadwick.") (Tes. 1455-56.)

(Witness excused.)

J. F. DALTON was called as a witness in behalf of the carriers and, having been first duly sworn, testified as follows:

Direct examination:

Since the Montgomery hearing we have applied the proposed shippers' scales to the movement of tonnage of the Norfolk Southern Railway included in the traffic test, which includes the traffic on which the Norfolk Southern Railroad is the delivering carrier. I would like to file an exhibit that shows the effect of that scale both upon the intrastate movement in Virginia and North Carolina respectively as well as upon the interstate tonnage of the Norfolk Southern Railroad included in the traffic test.

(The document so offered and identified was received in evidence and marked "Carriers' Exhibit No. 496, witness Dalton.")

It will be observed that the reduction is approximately $74,000, or a little more than 10 per cent of the total reduction shown in Exhibit 492 from the application of the shippers' scale to all of the tonnage involved in the test on behalf of all of the carriers.

[fol. 940] I would also like to file an exhibit showing the effect of the proposed scales on the tonnage handled by the Kingston Carolina Railroad for the period January 1 to June 1, 1925. The scale proposed for joint application in connection with the Kingston Carolina Railroad was 50 cents per ton higher than the joint line scale for application between trunk line, and since making this analysis we desire now to modify the proposal for joint line application between the Kingston Carolina, on the one hand, and the trunk lines on the other, to the effect of continuing the present basis of making those rates, which is combination on Kingston Carolina.

This exhibit which I will now offer does not make any separation as between intrastate and interstate traffic but includes all of the tonnage, which has been lumped.

(The document referred to was received in evidence, and marked "Carriers' Exhibit No. 497, witness Dalton.")

We have also made a similar analysis of the shippers' scale upon the tonnage handled by the Carolina railroad and desire to offer the result of such test as an exhibit, and in doing so to make the same modification with respect to the joint line scale in connection with the Carolina railroad as proposed by the joint line application in connection with the Kingston Carolina.

(The document referred to was received in evidence, and marked "Carriers' Exhibit No. 498, witness Dalton.")

It will be recalled that at the Montgomery hearing testimony was offered to the effect that Kingston Carolina and the Carolina Railroad respectively stock was owned by the Norfolk Southern Railroad; but those roads were never operated as a part of the system of the Norfolk Southern Railroad, and they are not today operated as an integral part of the system of the Norfolk Southern. It has a different set of operating officers, and since the question of applying the trunk line scale of rates over the Kingston Carolina and the Carolina Railroad respectively for local and joint line application during the past two years had been before the North Carolina State Corpora- [fol. 941] tion Commission involving the same issue of stock ownership, it occurred to us that it would perhaps be helpful to the Commission to have some information before it as to the consideration of that particular subject by the State of North Carolina, and with the Commission's permission I would like to file an exhibit containing certain excerpts from the Commission's opinion dealing with that situation, and which also goes quite thoroughly into the historical sketch of those railroads from the time they were built. (Tes. 1457-60.)

(The document referred to was received in evidence, and marked "Carriers' Exhibit No. 499, witness Dalton.")

Referring to Exhibit No. 498, which deals with the applications of the shippers' scale on the tonnage handled by the Carolina Railroad, it will be observed that that exhibit shows, first, the effect from a literal application of the scales; second, observing the rates from Norfolk to Maury, N. C., as the maximum rate that might be carried to Snow Hill, N. C., that it grows out of the question of

cross country competition between Maury, N. C., on the one hand, and Snow Hill, on the other.

The Commission, in 1916, under 4th section Order No. 5694, granted authority to the Carolina Railroad and its connections to carry rates at Snow Hill on classes and commodities, including fertilizer, the same as Maury, in order to effectively meet such cross country competition. In doing so it recognized the need of the Carolina Railroad for added revenues, and the fact that a higher level of rates than those contemporaneously applicable at Maury, N. C., would not bring it any tonnage of any consequence.

I believe that completes all the testimony that I have to offer. (Tes. 1460-61.)

Cross-examination:

In making this revenue test of our railroad, the Norfolk Southern Railroad, as shown in Exhibit 496, I used [fol. 942] the standard line scales. I used the standard Alabama scale; one submitted also by Mr. Bosley for application over the Norfolk Southern, which is the same as your standard. (Tes. 1461.)

(Witness excused.)

McC. B. Wilson was thereupon recalled as a witness for and in behalf of the carriers and having been previously sworn testified as follows:

Direct examination.

"By Mr. Cotterill:

"Q. Mr. Wilson, I want to ask you if in the rerating of tonnage of so-called imported materials you were governed by any prescribed rule enabling you to determine what was imported materials and what was not imported, or were you governed alone by the nature of the commodity shipped from the port?

"A. By the nature of the commodity.

"Q. You were given a list of articles which at some time had reached the port by water from a foreign country, and you assumed that the movement beyond the port was in continuation of an import movement?

"A. Well, I would not go that far, Mr. Cotterill. But we have in this exhibit 493, paragraph 2-B, a list of import fertilizer materials taken from the import fertilizer material tariff. I don't know the number of it. And we were guided entirely by that. Any one of those articles moving from the South Atlantic and Virginia and Gulf ports was included in that group 2-B."

We computed the present revenue on such movement from the billing as it stood; just exactly as it is collected. Of course, some of that business moved on collect bill of lading. All of this was reported on a received basis, and the line that finally delivered it at destination reported it to us on the basis of the actual money that showed on the way-bill.

"Q. Then if you used the money just as shown on the way-bill, that in itself would make unimportant the question as to whether locally the article was an import commodity or not. How about the instances of prepaid billing?

[fol. 943] "A. Well, they reported that, of course, as so much freight. It didn't make any difference whether it was prepaid or collect." (Tes. 1461-63.)

(Witness excused.)

T. A. Beasley was recalled as a witness in behalf of the shippers and, having been previously sworn, testified as follows:

Direct examination:

I have an exhibit containing certain statistical information drawn from official reports to the Commission dealing with the revenues of the Southern carriers throughout a series of years. I will make distribution of the exhibit. In such exhibit, among other things, are set forth figures indicating the tentative valuation of the Southern Class 1 carriers, plus net additions and betterments for succeeding years, for 1922, 1923, 1924, and, in some cases, for the first six months of 1925. As to the net additions and betterments in the year 1924, the exhibit contains an explana-

tory note that the amount added for that year over 1926 was the same as the amount of 1923 over 1922, as an approximation, because of the absence of the final figures for 1924; it is explained on the bottom of the statement these tentative valuation figures, plus net additions since January 1, 1920, as of January 1, 1923, the same amount as carriers' property investment account increased 1924 over 1923. As to the net railway operating income, that has been computed in two ways; first, before and after deducting Federal income taxes. It shows both net railway operating income after deducting the Federal income taxes and net railway operating income before deducting.

In order to show the net prior to the deduction of the Federal income taxes the net, after deducting the taxes, has been regarded as equal to 7/8 of the whole, or 12½ per cent of the net railway operating income. In effect, we simply added back the 12½ per cent Federal tax.

[fol. 944] In that way we were able to have made a computation indicating the rate of return on those tentative valuations as plussed by net additions and betterments for that series of years, as shown on the statement. I do not think the exhibit requires any further comment.

(The document referred to was received in evidence, and marked "Shippers' Exhibit No. 500, witness Bosley.") (Tes. 1463-65.)

Cross-examination:

I did not prepare this exhibit. As to where I got my tentative valuation figures: All of these figures except the net railway operating income before deducting Federal income tax were obtained from the Bureau of Railway Economics.

"Q. Did you get your tentative value there?

"A. That is what I understand to be the fact.

"Q. Do you know?

"A. No, I do not, except that the party who filed this——

"By Commissioner Eastman:

"Q. Is it the tentative valuation used by the Commission in Ex Parte No. 74?

"A. The tentative valuation shown here, yes; but the property investment is from the Bureau of Economics.

"Mr. McGehee: Inasmuch as Mr. Bosley did not prepare the exhibit and I understand the circumstances under which it is submitted by Mr. Bosley, we have no objection in the world to the submission of the exhibit, with the understanding, Mr. Cotterill, that we have an opportunity to deal with the situation in our brief as to the correctness of the figures.

"Mr. Cotterill: Entirely so.

"The Witness: If they are not correct they are subject to correction." (Tes. 1465-66.)

(Witness excused.)

[fol. 945] McC. B. Wilson was recalled as a witness in behalf of the carriers and, having been previously sworn, testified as follows:

By Commissioner Eastman:

"Q. Mr. Wilson, have you an answer to the question with respect to Item No. 6 in the explanatory statement in Exhibit 492?

"A. I have. The decrease on single line trunk line delivery, $486,712.57. That was the single line trunk. Now on the joint line trunk line deliveries there was a decrease of $79,651.42.

"On the single line short, it resulted in an increase of $16,464.48, while on the joint line short line traffic there was a decrease of $86,246.86." (Tes. 1467.)

The last one is business moving either in connection with the short line plus the short line or a trunk line plus a short line. (Tes. 1467-1468.)

(Witness excused.)

Hearing closed.

[fol. 946] Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Proposed report of Examiner Archer,

Exceptions on behalf of the Alabama Public Service Commission filed March 27, 1926, and

Petition for rehearing, and brief and argument in support thereof filed by the Alabama Public Service Commission November 11, 1926,

in Cases Nos. 16295, Fertilizer and Fertilizer Materials Between Southern Points, and 16336, Rates on Fertilizer and Fertilizer Materials Within the State of Alabama, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 17th day of May, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commission. (Seal.)

[fol. 947] Exhibit in Evidence

Interstate Commerce Commission

No. 16295[1]

Fertilizer and Fertilizer Materials Between Southern Points

Submitted —— —, ——. Decided —— —, ——

The general basis of rates on fertilizer and fertilizer materials in the southeast being under consideration; Found, that the peculiar function of this traffic and the indirect tonnage resulting from its use entitles it to a relatively low level in the rate scale.

[1] This report also embraces Docket No. 16335, In the Matter of Rates on Fertilizers and Fertilizer Materials Intrastate within the State of South Carolina; Docket No. 16336, In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within the State of Alabama; and Docket No. 16484, In the Matter of Rates on Fertilizer and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within the State of Georgia.

Reasonable rates prescribed for uniform application between points in the southeast.

Certain so-called short or weak lines accorded arbitraries over the distance scale.

Undue prejudice to exist against interstate shippers and localities, and unjust discrimination against interstate commerce by reason of the intrastate rates in Alabama.

The intrastate rates in Georgia and South Carolina found not to be unlawful for the future, except in individual instances.

Fourth section relief granted, subject to the same limitations as may be imposed in Brick and Clay Products in the South, 88 I. C. C. 543.

Full local rates from the Ohio River crossings and Virginia cities found unreasonable for the transportation of cyanamid originating beyond those gateways.

Frank W. Gwathmey for Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Seaboard Air Line Railway Company, Nashville, Chattanooga & St. Louis Railway Company, Florida East Coast Railway Company, Charleston & Western Carolina Railway Company, Clinchfield Railroad Company, Atlanta & West Point Railroad Company, Western Railway of Alabama, and Georgia Railroad.

W. N. McGehee for Southern Railway System Lines and Mobile & Ohio Railroad Company.

James Menzies for Atlantic Coast Line Railroad Company.

William B. Rodman and J. F. Dalton for Norfolk Southern Railroad Company, Carolina Railroad, and Kinston Carolina Railroad.

[fol. 948] Roy Pope and Gus Richmond for Atlanta, Birmingham & Atlantic Railway, B. L. Bugg, Receiver.

Edward D. Mohr and L. L. Drescher for Louisville & Nashville Railroad Company.

J. L. Sheppard for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

Alex. M. Bull for Gulf, Mobile & Northern Railroad and Birmingham & Northwestern Railway Company.

J. E. Monroe for Alabama & Vicksburg Railway.

N. V. Hutchinson for Columbus & Greenville Railway Company.

E. C. Ash for Alabama, Tennessee & Northern Railroad Corporation and Alabama & North Western Railroad Company.

J. A. Streyer for members of the American Short Line Railroad Association.

Hon. A. G. Patterson, Hugh White, and J. H. Alldredge for Alabama Public Service Commission.

Hon. James A. Perry and E. M. Price for Georgia Public Service Commission.

Hon. R. Hudson Burr and J. H. Tench for Florida Railroad Commission.

Hon. M. C. Moore and B. F. Martin for Mississippi Railroad Commission.

Hon. A. J. Maxwell for North Carolina Corporation Commission.

Hon. Rush H. Knox, Attorney General of Mississippi.

Hon. Oscar Vert, Hon. Isaac Wilder, Hon. Moses R. Glenn, and L. F. Orr for Kentucky Railroad Commission.

Charles E. Cotterill for American Farm Bureau Federation, Southern Traffic League, National Fertilizer Association, Alabama Farm Bureau Federation, Tennessee Farm Bureau Federation, Mississippi Farm Bureau Federation, Louisiana Farm Bureau Federation, Kentucky Farm Bureau Federation, and affiliated state commodity marketing associations.

Harry T. Moore for Atlanta Freight Bureau.

John A. O'Rourke for West Palm Beach Traffic Bureau, West Palm Beach, Fla., and Miami Traffic Bureau, Miami, Fla.

R. L. Askea for Raleigh Freight Traffic Bureau, Durham, N. C., Chamber of Commerce, Farmville Oil & Fertilizer Company, and Freemont Oil Mill Company.

T. A. Bosley for National Fertilizer Association, Southern Fertilizer Association, Southern Traffic League, and Virginia-Carolina Chemical Company.

A. J. Young for International Agricultural Corporation.

M. R. Beaman for Eastern Carolina Wholesale Dealers & Manufacturers Association.

M. Walsh and E. M. Weatherly for Dothan Chamber of Commerce.

Jas. S. Davant for Memphis Freight Bureau.

J. L. Roberts for Barrett Company.

W. H. Hendley for Spartanburg Transportation Association.

Thomas J. Burke for Charleston Traffic Bureau.

A. J. Whitman for American Agricultural Chemical Company.

R. L. Rogers for Swift & Company.

J. O. Cromwell for Macon Chamber of Commerce and Cotton States Fertilizer Company.

Frank E. Harrison for Florida Traffic Association.

R. G. Cobb for Mobile Chamber of Commerce.

E. B. Gaines for Savannah Traffic Bureau.

L. F. Daspit for Louisiana Farm Bureau Federation.

Fred Juenger for Texas Gulf Sulphur Company.

Thos. D. Guthrie for Jacksonville Traffic Bureau, Inc.

C. W. Hayward for City of Meridian, Miss., and Meridian Traffic Bureau.

D. A. Dashiell for Royster Guano Company.

Hugh M. Frampton and R. O. E. Davis for United States Department of Arieulture.

[fol. 949] Robert E. Quirk and Norman, Quirk & Graham for American Cyanamid Company.

Carl Giessow and Edgar Moulton for New Orleans Joint Traffic Bureau.

C. L. Neill and T. P. Goodwin for Mississippi Farm Bureau Federation.

F. W. Beyer for Nitrate Agencies Company and W. R. Grance & Company.

J. A. Parrish for Lakeland Chamber of Commerce and Non-Acid Fertilizer & Chemical Company.

J. W. Kirtland for Standard Chemical Company.

T. M. Henderson and N. S. Owen for Read Phosphate Company and Traffic Bureau of Nashville.

M. M. Caskie for Alabama Cottonseed Crushers Association and Montgomery Chamber of Commerce.

H. E. Snow for Southeastern Live Stock Association.

B. F. Martin and A. R. Fallon for Union Sulphur Company.

Hugo Ignatius and H. P. Friedman for Portsmouth Oil & Refining Company, Montezuma Cotton Oil Company, Perkins Oil Company, Planters Cotton Oil Company, Inc., Tuscumbia Cotton Oil Company, Inc., Interstate Cottonseed Crushers Association, and Southern Traffic League.

Hugo Ignatius for Buckeye Cotton Oil Company, Southern Cotton Oil Company, Mississippi Cottonseed Crushers Association, Alabama Cottonseed Crushers Association, Georgia Cottonseed Crushers Association, South Carolina Cottonseed Crushers Association, and North Carolina Cottonseed Crushers Association.

Wm. H. Fleming for Southern States Phosphate & Fertilizer Company.

W. C. Erman for Southern Cotton Oil Company, Southern Traffic League, and Interstate Cottonseed Crushers Association.

F. G. Moore for Davison Chemcial Company and National Fertilizer Association.

W. Albert Wilde for Lexington Board of Commerce.

Report Proposed by H. W. Archer, Examiner

Dissatisfaction on the part of shippers and users as well as of carriers with the rates on commercial fertilizer and fertilizer materials in the southeast[2] has for some time been increasingly voiced, reaching the commission through formal as well as informal complaints. The disposition of such formal proceedings as have been brought has served to mitigate the discontent only in the particular sections affected, and has not reached the root of the difficulty. Interstate rates vary greatly for substantially similar hauls; many fourth section departures exist; and the intrastate rates which have been prescribed and enforced by some of the State authorities constitute a bone of contention between those authorities and the carriers, and have adversely affected, it is said, manufacturers and dealers shipping into those states from interstate points. During 1924, three petitions were filed with the commission by carriers seeking relief under section 13 of the interstate com-

[2] A description of the southeast as covered by this investigation will be found in appendix A hereto. In general, it covers southern classification territory, including the State of Virginia.

merce act from what they consider the unduly low intrastate rates in the State of South Carolina, Alabama and Georgia.[3]

[fol. 950] Three times the rates on fertilizer from Norfolk, Va., to points in North Carolina have been before us in what have come to be known as the Royster Cases,[4] and the rates there finally prescribed by this commission are now considered unsatisfactory by the Corporation Commission of North Carolina. The general conditions obtaining with respect to the fertilizer rates throughout the southeast led the commission on October 7, 1924, on its own motion, to institute a general investigation and inquiry "into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, * * * with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises."[5]

The purpose of this proceeding, therefore, is to determine upon a basis of rates for interstate application throughout the territory involved which will be reasonable for the transportation of fertilizer and fertilizer materials, will be free from undue prejudice and preference, and will conform, as nearly as may be, to the provisions of the fourth section of the act. With the proceeding there have been consolidated for hearing and disposition the three section 13 cases already referred to which involve alleged undue preference of intrastate traffic in Alabama, Georgia, and South Carolina, and alleged undue prejudice to interstate traffic. While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can appropriately and fairly be used as a basis for achieving harmony and uniformity in the rates applicable on both

[3] Dockets Nos. 16335, 16336, and 16494, respectively, already referred to.

[4] Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 455; Same v. Same, 33 I. C. C. 198; and Same v. Same, 50 I. C. C. 24.

[5] See Appendix A for full copy of order of October 7, 1924.

classes of traffic throughout the southeast is one of the principal aims of the commission in this proceeding.

Hearings have been held at Atlanta, Ga., Montgomery, Ala., and Washington, D. C., and the record, containing over 1,400 pages of testimony and 500 exhibits, seems fully to cover all angles of the subject. In the beginning the parties were advised that the principles enunciated in the joint Congressional resolution known as the Hoch-Smith Resolution* were now a part of the law, and that conclusions would be reached with those principles in mind. They were cautioned to submit such evidence as was deemed by them pertinent in the premises.

The "true policy in rate making," as declared in this resolution, is "that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move." The condition of the fertilizer industry was not pleaded at the hearings. The position of the manufacturers, as stated by their principal witness, is that fertilizer should be assigned "to such a rating as recognizes its peculiar position as an agricultural necessity." That the existing inequalities in the present rate adjustment shall be wiped out and uniformity prevail is clearly the predominant issue so far as the manufacturers are concerned.

[fol. 951] A second mandate of this resolution is that because of "existing depression in agriculture * * * such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression" shall be brought about. The freight rates on fertilizer, in and of themselves, have only an indirect relation to the "freedom of movement" of agriculture products. Beyond question the free use of fertilizer increases production, and in this way tends to reduce unit costs, but this phase of the resolution as well as its general spirit are, it seems, fully taken care of by certain elements which, in the past, have been considered by this commission in fixing rates on this traffic, namely, its importance in the successful conduct of

*See Appendix B for copy of resolution.

agriculture, and the increased tonnage accruing to the carriers by reason of its use. In a number of decisions, the commission has said:

Fertilizer is a low-grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the sense that "special service" is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions, it is entitled to comparatively low rates. Virginia Carolina Chemical Co. v. St. L. S. W. Ry. Co., 16 I. C. C. 49, 52-53; Meridian Fertilizer Factory v. V., S. & P. Ry. Co., 20 I. C. C. 554, 555; Meridian Fertilizer Factory v. T. & P. Ry. Co., 26 I. C. C. 351, 353, and other decisions.

The commissions of the States of Alabama, Georgia, Florida, Mississippi, Kentucky, and North Carolina were represented at the hearings, and they took an active and helpful part in developing the record. At the instance of the shipping interests, the United States Department of Agriculture also participated, its position being merely to present certain facts and statistics relative to the industry and to the use of fertilizer.

General History of the Fertilizer Industry

The fertilization of soils to increase their productivity has been practiced since the earliest times. The discoverers of America found the Indians fertilizing their corn by placing a dead fish in the hill of each plant. Such articles as ashes, animal offal, scraps of meat, vegetable waste, and the like, were quite commonly used in the early days, and at that time were, in fact, the only known fertilizing agents. The first commercial fertilizing material of any consequence sold in this country was Peruvian guano, used principally by the cotton and tobacco planters of the South.

It was not until late in the eighteenth century that definite steps were taken to ascertain the functions of the various fertilizing materials used. Through experimentation it was learned that nitrogen accounted for the vegetable

growth of plants, phosphoric acid for their fruitage and maturity, and potash or potassium for their vigor and strength, and so today all so-called complete fertilizers contain at least two of these plant foods, and generally all three. Other elements are essential to plant life, but they are usually found in sufficient quantities in the soil, and are seldom included in fertilizing compounds.

The fertilizer industry as we know it today had its beginning in South Carolina with the discovery of phosphate rock deposits. In 1860, Dr. Nathaniel Pratt of Charleston, S. C., ascertained that this rock contained a high percentage [fol. 952] of phosphoric acid, and later it was found that this could be made available as a plant food by treating the ground rock with sudphuric acid. In 1869 and 1870 the first acid phosphate for fertilizing purposes was produced. Phosphate rock is now largely secured in Florida and Tennessee, some being furnished by Kentucky, the quarries in South Carolina having become practially exhausted.

Nitrogen, probably the most important of the three essential elements, is obtained principally from nitrate of soda imported from northern Chile, where the only deposits of caliche (as the unrefined salt is called) having a commercial value are located. Scattered deposits have been found in this country but not in sufficient quantities to warrant exploitation. The first shipments of nitrate were brought into this country in 1830, but it was not until about 1881 that the importation became important. During the calendar year 1924, over 1,000,000 net tons were imported through the various ports. Ammonium sulphate is also an important carrier of nitrogen in the form of ammonia, and the production of this commodity, a byproduct of coke ovens and gas plants, has increased rapidly within the last few years, over 600,000 tons having been produced in 1923.

The other principal carriers of nitrogen in ammoniate form are tankage, blood, fish scrap, and cottonseed meal, and in recent years the nitrogen in the air has been extracted and combined with calcium carbide, a fused mixture of lime and coke, producing what is known as cyanamid. This last named commodity is produced at Niagara Falls, Ontario, Canada, the only plant in North America, and is imported from European countries.

Potassium, commonly known as potash, the third essential plant food supplied by commercial fertilizers, is obtained principally from potassium sulphate, potassium muriate, manure salts, and kainit, imported from the mines of Germany and the Alsacian mines of France. During the World War these foreign fields were inaccessible, and manufacturers in this country were forced to turn their attention to domestic sources of production. The principal natural sources discovered in this country have been Searles Lake in California and certain lakes in Nebraska. It is also obtained as a by-product at cement mills, blast furnaces, and in the manufacture of alcohol from molasses. In 1919 the domestic production of available potash had reached approximately 50,000 tons. Since the War, however, foreign competition reduced the production in this country to 23,000 tons in 1924 as compared with an importation during the same year of 655,326 tons.

Importance of Fertilizer to the Southeast

The importance of fertilizer to the southeast is graphically shown by the fact that it is by far the largest user of any section of the country. Out of a total consumption in the United States of 6,647,308 tons in 1923, the southeast used 4,220,807 tons. Of the southeastern states, North Carolina, South Carolina, and Georgia led in the amount consumed, their total for that year being 2,436,375 tons. In 1924 the total production was 7,272,000 tons, of which the southeast used 4,680,000 tons, a little less than half of which was used on cotton alone. The average consumption of fertilizer per acre, determined by dividing the total amount used by the acreage under cultivation, is shown to have been used in 1923 as follows:

[fol. 953] Florida	557	pounds.
North Carolina	298	"
South Carolina	231	"
Virginia	210	"
Georgia	136	"
Alabama	103	"
Mississippi	65	"
Louisiana	51	"
Tennessee	32	"
Kentucky	30	"

The above figures do not, of course, represent the actual application per acre, for all cultivated lands are not fertilized. For example, in Alabama the average amount actually used per acre on fertilized crops was said to be around 230 pounds. In some cases as high as 800 pounds per acre are used on cotton, but the average application on this crop in the several southeastern states is shown to be as follows:

For the Year 1924

North Carolina	450	pounds.
Virginia	440	"
South Carolina	345	"
Georgia	270	"
Alabama	238	"
Tennessee	205	"
Florida	200	"
Mississippi	200	"
Louisiana	175	"

In the growing of tobacco and in truck farming, the application per acre is somewhat greater than in the case of cotton. This is illustrated by the fact that in Florida, which is largely devoted to the growing of vegetables and fruits, the consumption of fertilizer per acre of land cultivated was 557 pounds in 1923. Of a total of 573 manufacturing plants in the United States devoted exclusively to the production of fertilizer, 422 were located in southeastern territory, over 120 plants being located in Georgia alone.

The fertilizer tonnage is also of relatively greater importance to the southeastern carriers than it is to the lines of other sections. In 1923, the fertilizer tonnage of the southern roads represented 1.46 per cent of their total freight tonnage, as compared with .35 per cent in the eastern district and .18 per cent in the western district. The Atlantic Coast Line leads the southern carriers in the total of fertilizer handled, with the Southern second, and the Seaboard Air Line third. In the ratio of fertilizer to the total freight transported, the Central of Georgia ranks first, its fertilizer tonnage representing 6.61 per cent of the total, with the Atlantic Coast Line second, and the Norfolk Southern third. These transportation figures, it is

said, do not include such materials as potash, acid phosphate and nitrate of soda, these articles, for purposes of statistical returns to this commission, being included in Commodity Group 66, chemicals and explosives. If taken into consideration, as they should be, the carriers' figures showing the fertilizer tonnage transported would no doubt be appreciably increased. The total revenue of Class I roads in the Southern district for 1923 from their fertilizer tonnage is shown as $10,307,000, or 1.3 per cent of the total revenue from all freight handled. In the Eastern District the revenue from the transportation of fertilizer represented but .3 per cent of the total freight revenue. The revenue of the Atlantic Coast Line from fertilizer represented 4.7 per cent of its total freight revenue for 1924, and that of the Southern for the first seven months of 1924 represented 3.63 per cent of its total revenue for the same period.

[fol. 954] It seems to be beyond debate that agriculture in the south cannot be successfully conducted without the use of fertilizer, and agriculture is said to be the basic industry of that section. The vice-president of the American Farm Bureau Federation testified that "the relationship which fertilizer bears to successful agriculture is immediate and so direct as in large measure to control the tonnage of agricultural products transportable by the carriers and indirectly to control their total tonnage by reason of the influence which successful agriculture has upon general conditions of prosperity throughout all lines of business in the south." In the south Atlantic States it is said that to the use of fertilizer is due one-half of the tobacco crop, one-third of the crop of white and sweet potatoes, wheat, and truck crops, and two-thirds of the cotton crop. Under experiments conducted by the North Carolina Department of Agriculture, it was found that an application of 800 pounds per acre of fertilizer analyzing 7 per cent phosphoric acid, 5 per cent ammonia, and 4 per cent potash, resulted in an increased production over unfertilized soil of 834 pounds of seed cotton per acre. In the State of Alabama, experiments showed that while there was an average production of but 98 pounds of lint cotton per acre without fertilization, 203 pounds were produced by the use of 325 pounds of fertilizer per acre, and 260

pounds were produced by the use of 650 pounds of fertilizer. Based on returns from the entire southern cotton area, it was shown that with an average expenditure in 1924 of $1.73 per acre for fertilizer, the yield was but 36 pounds of lint cotton, whereas with an expenditure of $5.73 per acre, the yield was 637 pounds. It takes approximately three pounds of seed cotton to produce one pound of lint.

Defendants admit the economic advantages accruing from the use of fertilizer, but contend that because of this very fact there is no more reason for subnormal rates on this particular commodity than there is for rates below a reasonable level on implements of the farm, inasmuch as they, too, are necessary for the successful operation of agriculture.

The Carriers' Proposal

In order to remove the many inconsistencies in the fertilizer rate structure, the carriers propose for uniform application throughout the southeast, except as hereinafter noted, a distance scale of rates based on the scale prescribed by this commission in Royster Guano Co. v. A. C. L. R. R. Co., 50 I. C. C. 34, and hereinafter referred to as the Royster Scale. That proceeding involved rates on fertilizer from Norfolk, Va., to points in North Carolina, and these rates, as stated, have been three times before this commission. The rates were first attacked by the Royster Guano Company in 1913 as unreasonable and unduly prejudicial to Norfolk and unduly preferential of Wilmington, N. C. On July 1, 1914, this commission prescribed a reasonable distance scale, with a carload minimum weight of 20,000 pounds. 31 I. C. C. 458. On October 13, 1914, there were promulgated by a special committee, appointed by the Governor of North Carolina under an act of the legislature, certain State rates, among them rates on fertilizer which were materially lower than the intrastate rates in effect at the time of the commission's decision of July 1, 1914. This brought forth a further complaint from the Royster Guano Company alleging that the rates from Norfolk were unreasonable per se, and unduly prejudicial to complainant and the City of Norfolk

and unduly preferential of competitors operating in North Carolina. Under date of February 18, 1916, this commission issued its second report reaffirming its previous finding as to a reasonable scale of rates, and requiring the same level of rates to be maintained in the State of North Carolina in order to remove the undue prejudice to Norfolk and shippers at that point. Subsequently the [fol. 955] order in the second proceeding was amended to increase the minimum from 20,000 pounds to 24,000 pounds. Later, in accordance with the expressed desire of the Corporation Commission of North Carolina, the amended order was vacated and the proceeding reopened for further hearing, that commission coming in as an intervener. As the outcome of the further hearing, this commission adopted the intrastate rates in North Carolina as reasonable maximum rates from Norfolk to points in that state, but increased the minimum carload weight to 30,000 pounds.

The carriers do not propose this scale as representing reasonable maximum rates, but as a proper basis in view of all the circumstances and conditions. The scale proposes is shown below. In connection therewith are given the ton-mile as well as the car-mile earnings based on the proposed minimum of 30,000 pounds.

[fol. 966]

Miles	Proposed single line rates	Revenue per ton-mile (a) (Cents)	Revenue per car-mile (a) (Cents)	Proposed joint line rates	Revenue per ton-mile (a) (Cents)	Revenue per car-mile (a) (Cents)
5 and under	$ .90	18.00	270.	...	...	...
10 and over 5	1.02	10.20	153.	$1.36	10.60	204.
15 " " 10	1.24	8.26	124.	1.58	10.53	158.
20 " " 15	1.35	6.75	101.	1.69	8.45	126.
25 " " 20	1.47	5.88	88.	1.81	7.24	108.
30 " " 25	1.58	5.27	79.	1.92	6.40	96.
35 " " 30	1.58	4.51	67.	1.92	5.49	82.
40 " " 35	1.69	4.25	63.	2.03	5.07	76.
45 " " 40	1.80	4.00	60.	2.03	4.51	67.
50 " " 45	1.80	3.60	54.	2.14	4.28	64.
55 " " 50	1.92	3.49	52.	2.14	3.89	58.
60 " " 55	2.03	3.38	50.	2.25	3.75	56.
65 " " 60	2.03	3.12	46.	2.37	3.65	54.
70 " " 65	2.14	3.06	45.	2.37	3.39	50.
75 " " 70	2.14	2.86	42.	2.48	3.31	49.
80 " " 75	2.25	2.81	42.	2.59	3.24	48.
85 " " 80	2.37	2.79	41.	2.59	3.05	45.
90 " " 85	2.37	2.63	39.	2.70	3.00	45.
95 " " 90	2.48	2.61	39.	2.70	2.83	42.
100 " " 95	2.59	2.59	38.	2.82	2.82	42.
110 " " 100	2.59	2.35	35.	2.93	2.66	39.
120 " " 110	2.70	2.25	33.	2.93	2.44	36.

Miles	Proposed single line rates	Revenue per ton-mile (a) (Cents)	Revenue per car-mile (a) (Cents)	Proposed joint line rates	Revenue per ton-mile (a) (Cents)	Revenue per car-mile (a) (Cents)
130 and over 120	2.70	2.08	31.	3.04	2.34	35.
140 " " 130	2.82	2.01	30.	3.15	2.25	33.
150 " " 140	2.93	1.95	29.	3.27	2.18	32.
160 " " 150	3.15	1.97	29.	3.38	2.11	31.
170 " " 160	3.15	1.85	28.	3.49	2.05	30.
180 " " 170	3.27	1.82	27.	3.49	1.94	29.
190 " " 180	3.27	1.72	26.	3.60	1.89	28.
200 " " 190	3.38	1.69	25.	3.72	1.86	27.
210 " " 200	3.49	1.66	25.	3.72	1.77	26.
220 " " 210	3.49	1.59	24.	3.83	1.74	26.
230 " " 220	3.60	1.57	23.	3.83	1.67	25.
240 " " 230	3.72	1.55	23.	3.94	1.64	24.
250 " " 240	3.72	1.49	22.	4.05	1.60	24.
260 " " 250	3.83	1.47	22.	4.05	1.56	23.
270 " " 260	3.83	1.42	21.	4.17	1.54	23.
280 " " 270	3.94	1.40	21.	4.28	1.53	23.
300 " " 280	4.05	1.35	20.	4.39	1.46	22.
320 " " 300	4.28	1.34	20.	4.50	1.40	21.
340 " " 320	4.39	1.29	19.	4.62	1.36	20.
360 " " 340	4.50	1.25	19.	4.84	1.34	20.
380 " " 360	4.62	1.22	18.	4.95	1.30	19.
400 " " 380	4.84	1.21	18.	5.07	1.27	19.
420 " " 400	4.95	1.18	18.	5.18	1.23	18.

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440	"	"	420	5.07	1.15	17.	5.40	1.23	18.
460	"	"	440	5.18	1.13	17.	5.52	1.20	18.
480	"	"	460	5.40	1.13	17.	5.63	1.17	17.
500	"	"	480	5.52	1.12	16.	5.74	1.15	17.
525	"	"	500	5.63	1.08	16.	5.97	1.14	17.
550	"	"	525	5.74	1.04	15.6	6.08	1.11	16.6
575	"	"	550	5.97	1.04	15.5	6.19	1.07	16.1
600	"	"	575	6.08	1.00	15.2	6.30	1.05	15.7
625	"	"	600	6.19	.99	14.8	6.53	1.04	15.6
650	"	"	625	6.30	.97	14.5	6.64	1.02	15.3
675	"	"	650	6.53	.97	14.5	6.75	1.00	15.0
700	"	"	675	6.64	.95	14.2	6.87	.98	14.7
725	"	"	700	6.75	.93	14.0	7.09	.97	14.6
750	"	"	725	6.87	.91	13.7	7.20	.96	14.4
775	"	"	750	7.09	.91	13.7	7.32	.94	14.1
800	"	"	775	7.20	.90	13.5	7.43	.93	13.9
825	"	"	800	7.32	.89	13.3	7.65	.93	13.9
850	"	"	825	7.43	.87	13.1	7.74	.91	13.7
875	"	"	850	7.65	.87	13.1	7.92	.91	13.6
900	"	"	875	7.77	.86	13.0	8.01	.89	13.4
925	"	"	900	7.88	.85	12.8	8.19	.89	13.3
950	"	"	925	7.99	.84	12.6	8.37	.88	13.2
975	"	"	950	8.22	.84	12.6	8.46	.87	13.0
1000	"	"	975	8.33	.83	12.5	8.55	.86	12.8

(a) The earnings shown are based on the greatest mileage in the individual blocks.

[fol. 958] The foregoing scale is intended to apply not only on mixed fertilizers, but on the various materials entering into the manufacture thereof. These materials are set out in appendix C. Various carload minima are proposed in connection with the different articles, as shown in the appendix, ranging from 30,000 to 60,000 pounds, the majority taking a 40,000-pound minimum. It will be observed from this list of materials that phosphate rock is included only in its ground form, and that sulphuric acid, with which the ground phosphate rock is treated in order to make available the phosphoric acid content of the rock, is not named. Neither is ground limestone embraced in the list of materials. These commodities generally take somewhat lower rates than are accorded other materials, and all parties seem agreeable to excluding them from consideration in this proceeding.

In presenting this scale for application throughout southern territory, witness explained that it was not intended to apply between points on the Chesapeake & Ohio, between points on the Norfolk & Western from Norfolk, Va., to Cincinnati, Ohio, nor between points on the Virginian from Norfolk to Deepwater, W. Va., these lines being embraced in what is known as truck line territory, and their rates governed by official classification. The exclusion of rates between these points, except local points on the Chesapeake & Ohio in Kentucky which were not included in the order, seems, however, to have been predicated on the probability that these carriers would individually participate in the proceeding in protection of their respective interests, but although made parties to the proceeding no appearances were entered on their behalf.

The Royster Scale is proposed by the carriers because it has been prescribed by this commission in two subsequent cases, namely, Freight Adjustment Steering Committee v. A. C. L. R. R. Co., 53 I. C. C. 506, decided June 9, 1919, and Goldsboro Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315, decided July 10, 1924; and it is, therefore, considered that that scale has been impressed to a more or less extent with the sanction of this commission. Those cases involved rates on fertilizer and fertilizer materials from Charleston, S. C., to North Carolina destinations, and from Wilmington, N. C., to destinations in the same State, re-

spectively. Besides the rates maintained in accordance with these decisions, the Royster Scale is also in effect from Richmond, Va., to points in North Carolina, from Wilmington and other points in North Carolina to destinations in South Carolina, from points in South Carolina to points in North Carolina, and from points in North Carolina to destinations in Virginia. Forty-six per cent of the total fertilizer tonnage handled by the Atlantic Coast Line in 1923 moved, it is testified, under the Royster scale. This scale is said to be lower, generally speaking, than the rates from Savannah, Atlanta, Elberton and Macon, Ga., to various points in South Carolina, from Albany, Ga., to points in Florida, from Charleston to South Carolina destinations on imported fertilizer material, from Dothan and Montgomery, Ala., to certain Georgia points, and in certain other instances. Rates between points in Florida, and the intrastate rates in Virginia are both higher and lower than the Royster Scale. The carriers do not, however, seek to convey the impression that, taken as a whole, the rates in the South are today higher than the Royster Scale,—it is merely claimed that numerous reductions will be effected through its uniform application. About 70 per cent of the tonnage of fertilizer and fertilizer materials moving in the southeast is intrastate traffic, and the intrastate rates in the several southeastern States are compared below with the carriers' proposed scale:

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Distance (Miles)	Va. (a) (a)	N. C.	S. C.	Ga.	Fla. (b)	Ala.	Miss. (c)	La. (d)	Tenn. (e)	Ky.	Carriers' Proposed Scale
5	45	90	90	68	147	80	90	90	135	90	90
10	45	102	90	102	147	90	100	102	135	90	102
25	102	147	120	124	169	120	100	102	147	113	147
50	169	180	169	158	203	145	100	102	169	169	180
75	203	214	198	180	237	170	120	113	203	225	214
100	225	259	228	214	259	195	140	147	225	259	259
125	259	270	258	259	282	225	180	180	225	259	270
150	259	293	288	282	293	245	220	214	259	259	293
175	293	327	307	304	315	275	260	248	259	270	327
200	304	338	327	315	315	295	280	259	282	282	338
225	315	360	337	338	315	325	320	259	282	293	360
250	349	372	337	349	327	345	350	270	282	315	372
275	394	394	337	360	327	365	370	282	...	315	394
300	405	405	337	383	327	375	400	293	...	327	405
350	450	450	...	439	338	405	...	...	...	...	450
400	495	484	...	462	349	425	...	...	...	...	484
450	518	518	...	484	360	455	...	...	...	...	518
500	552	551	...	...	360	475	...	...	...	...	552

(a) Scale 1 of the Southern Railway, applicable south of Richmond and Danville, apparently the lowest scale in the state, but which the shippers say is fairly representative of Virginia rates.

(b) In Florida, fertilizer materials take 75 per cent of fertilizer rates.

(c) The intrastate rates in Mississippi are not uniform via all lines. Those shown are in effect via the Illinois Central, and up to and including 170 miles are the same as those published by the Mobile & Ohio, New Orleans & Northeastern, St. Louis & San Francisco and Gulf, Mobile and Northern. Beyond 170 miles, the rates are lower than shown via the Yazoo & Mississippi Valley, Mobile & Ohio and the Gulf, Mobile & Northern, the other lines mentioned not maintaining rates for the longer distances. The rate via the Y. & M. V. for 300 miles is $2.93, and via the G. M. & N, $2.60.

(d) East of the Mississippi River.

(e) From Chattanooga, Tenn., to Southern Railway Stations; there are other scales in effect in the state that are on a higher basis.

[fol. 960] The carriers attempt to show that their proposed scale is lower than the average of the intrastate rates in Texas, Missouri, Oklahoma, Arkansas, and Louisiana west of the Mississippi River. The shippers[1] challenge the correctness of the Arkansas rates and certain of the Louisiana rates. As stated by them, and their showing appears to be correct, the carriers' proposed scale is higher than the average of these intrastate rates except for 180 miles and over, and except for the shorter distances of 10 miles and under. The rates in Texas, Arkansas, and western Louisiana are, as a rule, lower than the proposed scale for distances of from 15 to 170 miles and the rates in Missouri are, in most cases, lower except for the shorter distances up to 40 miles. In Oklahoma, where a higher basis is maintained, there was but one fertilizer manufacturing plan in 1924, and the estimated consumption amounted to but 3,000 tons. The intrastate rates of the States north of the Ohio River, including New York, Pennsylvania, Michigan

[1] The term "shippers" as used in this report should be understood to include, generally, the agricultural, manufacturing, and other interests as distinguished from the carriers.

and Wisconsin, are also set forth to show the relative reasonableness of the carriers' proposed scale. These rates are, in most cases, the sixth-class rates which were prescribed in the C. F. A. Class Scale Case. The proposed rates are lower than those shown, except in Illinois for distances over 50 miles. At 100 miles, the Illinois scale is 39 cents per ton under the carriers' rate for that distance, and at 300 miles, 75 cents less than the carriers' proposed rate. The record indicates, however, that in official territory fertilizer moves to quite an extent on specific commodity rates, and many of these as well as the class rates are blanketed over rather extensive groups.

The carriers cite many rates from various manufacturing points to destinations in official territory. They are far too numerous to set out in any detail, but are generally higher than the proposed scale, and in many cases substantially higher. The following examples are thought to be fairly representative:

From Baltimore, Md. to	Distance (Miles)	Rate	Carriers' proposed scale
Harpers Ferry, W. Va	80	$3.70	$2.25
Harrisburg, Pa	96	3.20	2.59
Martinsburg, W. Va	98	3.80	2.59
Cumberland, Md	176	4.70	3.27
Manunka Chunck, N. J.	204	4.40	3.49
Grafton, W. Va	a278	5.00	3.94
Ridgeway, Pa	b326	4.50	4.39
East Liverpool, Ohio	361	5.10	4.62
Cadiz, Ohio	403	6.40	4.95
Lockwood, Ohio	405	5.80	4.95
Meadville, Pa	429	5.10	c5.40
Zanesville, Ohio	453	6.40	5.18
Port Henry, N. Y	453	6.00	c5.52

a. This rate is blanketed from Keyser, W. Va., 199 miles, to Long Run, W. Va., 319 miles.

b. This rate is blanketed over the entire Renova Division of the Pennsylvania from Renovo, Pa., to Erie, Pa., involving hauls of from 249 to 445 miles.

c. Joint-line rates.

[fol. 961]

From Philadelphia Pa. to	Distance (Miles)	Rate	Carriers' proposed scale
Leslie, Md.	50	$2.60	$1.80
Aberdeen, Md	65	3.10	2.03
Lansdowne, Md	103	3.20	2.59
Martinsburg, W. Va	196	4.40	3.38
Green Springs, W. Va	260	5.00	3.83
Cumberland, Md	272	5.00	3.94
From Syracuse, N. Y. to			
Geneva, N. Y	51	2.30	1.92
Fonda, N. Y	104	2.90	2.59
Albany, N. Y	158	3.20	3.15
Germantown, N. Y	196	3.80	3.38
Peekskill, N. Y	249	4.30	3.72

Supplementing the above, the carriers refer to a number of decisions by this commission in which it is said, in substance, that the more favorable transportation conditions and the greater traffic density north of the Ohio River warrant a lower level of rates in that territory than in the south.*

The shippers combat this showing by exhibiting the fertilizer rates that were in effect in the north prior to the five per cent increase as compared with the rates prescribed in the Royster case, to show that the respective levels were as of that period about the same, and that in many cases the rates in the north were the lower. A few illustrations are set forth below:

* Sugar Cases of 1922, 81 I. C. C. 448, 469-470.
Commercial Club of Carrollton, Ky v. Director General, et al., 55 I. C. C. 697, 700; and others.

From Baltimore to	Distance (miles)	Rates prior to 5 per cent increase	Royster Scale as of April 29, 1918
Harpers Ferry, W. Va	80	$1.90	$1.60
Harrisburg, Pa	96	1.75	1.80
Hancock, W. Va	121	2.00	1.95
Cumberland, Md	176	2.20	2.30
Williamsport, Pa	197	2.00	2.40
Elmira, N. Y	273	2.40	2.80
Canandaigua, N. Y	341	2.60	3.20
Parkersburg, W. Va	382	3.00	3.40
From Philadelphia to			
Leslie, Md	50	1.25	1.30
Lansdowne, Md	103	1.60	1.85
Martinsburg, W. Va	196	2.20	2.40
Green Springs, W. Va	260	2.60	2.70
Cumberland, Md	272	2.60	2.80
St. Marys, Pa	325	2.60	3.10

[fol. 962]

From Syracuse to	Distance (miles)	Rates prior to 5 per cent increase	Royster Scale as of April 29, 1918
Geneva, N. Y.	51	$1.10	$1.35
Fonda, N. Y.	104	1.30	1.85
Albany, N. Y.	158	1.60	2.20
Germantown, N. Y.	196	1.90	2.40
Peekskill, N. Y.	249	2.10	2.65

The shippers further show that many of the rates on fertilizer materials in official territory are in fact lower at the present time than the scale proposed by the carriers, and particular attention is directed to the rate on acid phosphate, this being frequently used, it is said, as a complete fertilizer in the northern territory. The rates on these materials are blanketed over long distances; for example, the rate from Baltimore of $4.60 on nitrate of soda applies for distances of from 217 to 421 miles, and the rate of $3.20 on acid phosphate from Baltimore to points in trunk line territory applies for distances of from 146 to 433 miles. The

joint-line rates in this territory seem to be on the same level as the single-line rates. Under the Royster Scale the rates for these distances are as follows:

Distance (miles)	Single-line rates	Joint-line rates
146	$2.93	$3.27
217	3.49	3.83
421	5.07	5.40
433	5.07	5.40

It will be seen from the foregoing that the joint-line Royster Scale rate of $5.40 for 433 miles exceeds the rate on acid phosphate in trunk line territory for a similar distance by $2.20. The shippers do not contend, however, that the general level of fertilizer rates in the north is at present lower than the Royster Scale, but on the contrary it is admitted that, as a general proposition, the reverse is true. It is urged, however, that the reversal of the previous relationship has been brought about through the greater aggregate general increases allowed in official territory, beginning with the five per cent increase in 1915, and that the relative high level of fertilizer rates in this northern territory is due to the comparative unimportance of the traffic in the past. It is shown that in the States of Ohio, Indiana, Illinois, and Michigan but 379,000 tons were consumed in 1909. It is pointed out, however, that as time has gone on fertilizer has been increasingly used in central territory, and that in the States named 655,000 tons were consumed in 1924. In this connection attention is directed to a complaint filed with this commission by the Ohio Farm Bureau Federation in May, 1924, Docket No. 15912, attacking the rates on fertilizer in central territory and asking for the establishment of rates made 80 per cent of the present rates, and also to a similar complaint filed in November of the same year by the National Fertilizer Association, Docket No. 16494, asking for rates made 75 per cent of the sixth-class rates. The former basis results in rates somewhat higher than the Royster Scale for 90 miles and under, and lower than that scale for distances over 90 miles. At 100 miles, the Royster Scale rate is $2.59, and 80 per cent of the sixth-class rate in central territory for that distance is $2.40.

Counsel for the carriers sought to develop why, if 80 per cent of the sixth-class rates in central territory was considered proper, that basis should not also be used in the southeast. It appears, however, that sixth class is relatively a much lower class in central than in southern terri- [fol. 963] tory, and that the class rates in general in the former territory are better adapted to the movement of carload traffic than in the latter.

Numerous comparisons were submitted by the carriers contrasting the past and present fertilizer rates in Tennessee with those proposed. Although the proposed rates would bring about many reductions below the present basis, nevertheless increased rates would result in the majority of cases. It is pointed out, however, that these increases would occur to a great extent in those rates that were reduced under the commission's findings in I. & S. 1303, 64 I. C. C. 306, decided November 15, 1921, and that as compared with the rates in effect prior to the revision in that proceeding, the proposed scale would result in many reductions where now increases are shown. Somewhat similar comparisons are made with respect to rates from Memphis and the Ohio River crossings to points in Mississippi Valley territory. The proposed rates are, in most cases, considerably in excess of the rates which have resulted from the commission's finding in I. & S. 1303, but it is contended that these latter rates were not prescribed as reasonable maximum rates, but primarily for the purpose of removing fourth-section departures. Attention is directed to statements to this effect appearing in Jackson Paper Co. v. A. & V. Ry. Co., 87 I. C. C. 529; St. Louis Merchants Exchange v. A. & R. R. R. Co., 87 I. C. C. 547, and other cases. In I. & S. 1303, a base rate of $5.80 was prescribed on fertilizer from St. Louis, Mo., and Louisville, Ky., to New Orleans as a maximum, the rate today being $5.20. The distance to New Orleans from St. Louis is 698 miles and from Louisville 747 miles.

The carriers set forth many rates east of the Mississippi River principally in the southeast, in effect on various commodities, for the purpose, mainly, of showing that the car and car-mile revenue are in almost every instance higher than the revenue on fertilizer under the proposed rates

based on the average loading. These comparisons include rates on coal, cement, crushed stone, slag, scap iron, asphaltum, blackstrap molasses, sulphuric acid, roofing slate, salt, petroleum, manufactured iron, asphalt rock, lumber, wall plaster, and pig iron. Not only are the rates shown in many cases higher than the rates which the carriers are proposing on fertilizer, but on every commodity but two, coal and crushed stone, the car-mile earnings exceed those under the fertilizer rates, and in many instances by substantial amounts. And even on coal and crushed stone the earnings are, in the great majority of cases, higher than under the fertilizer rates. In the following table are shown what are believed to be representative rates on three of the commodities mentioned for distances of approximately 50, 100, 150 and 200 miles. The fertilizer rates shown are for single-line hauls, except where reference "J" to indicate joint-line service.

[fol. 964]

Coal

From	To	Distance (miles)	Rate	Car-mile rev. (cents)	Carriers' proposed rates on fertilizer	Car-mile rev. (cents)
Jellico, Tenn.	E. Bernstadt, Ky.	50	$1.13	109	$1.80	87
Birmingham, Ala.	Tuscaloosa, Ala.	55	1.19	104	1.92	85
Birmingham, Ala.	Bluffton, Ala.	100	1.70	82	2.59	63
Western Kentucky	Madison, Tenn.	104	1.35	62	2.59	60
Birmingham	Columbus, Ga.	157	1.92	62	3.15	42
Glen Mary, Tenn.	Asheville, N. C.	199	2.54	62	3.72 (J)	46
Clifty, Tenn.	Tennessee City, Tenn.	198	2.03	45	3.38	42

The car-mile earnings on coal are based on average loadings of from 44.4 to 51 tons, and those on fertilizer of from 21 to 24.5 tons.

Cement

C. F. A. Rates (a)	50	1.60	128b	1.80	83c
North Carolina intrastate scale	50	2.00	144d	1.80	83c
North Carolina intrastate scale	100	2.60	94d	2.59	60c
C. F. A. Rates (a)	100	1.90	76b	2.59	60c
Norfolk, Va., to Tarboro, N. C.	100	2.70	72e	2.59	54f
Norfolk, Va., to Kinston, N. C.	149	3.20	58e	2.93	41f
North Carolina intrastate scale	150	2.80	67d	2.93	45c
C. F. A. Rates (a)	150	2.30	61b	2.93	45c
C. F. A. Rates	200	2.50	50b	3.38	39c
North Carolina intrastate scale	200	3.00	54d	3.38	39c

(a) Prescribed in Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 1, from St. Louis and Hannibal, Mo., to points in Illinois, from Hannibal to points in Indiana, and from Buffington, Ind., to points in Illinois.

(b) Based on average loading of 40 tons.

(c) Based on average loading of 23 tons.

(d) Based on average loading of 36 tons.

(e) Based on average loading of 26.9 tons.

(f) Based on average loading of 21 tons.

Sulphuric Acid

From	To	Distance (miles)	Rate	Car-mile rev. (cents)	Carriers' proposed rates on fertilizer	Car-mile rev. (cents)
Copper Hill, Tenn.,	to Andrews, N. C.	51	$2.45	231	$2.14J	97
Copper Hill, Tenn.,	to Marietta, Ga.	96	2.50	125	2.59	62
Copper Hill, Tenn.,	to Knoxville, Tenn.	107	2.10	94	2.59	56
Copper Hill, Tenn.,	to Rome, Ga.	152	2.50	79	3.38J	51
Copper Hill, Tenn.,	to Macon, Ga.	205	3.10	73	3.72J	42
Grasselli, Ala.,	to Hampton, Ga.	206	3.49	81	3.72J	42

The car-mile earnings on sulphuric acid are based on an average loading of 48 tons, and those on fertilizer on an average loading of 23 tons.

[fol. 965] In connection with the rates on sulphuric acid, the carriers direct attention to the statement made in International Agricultural Corp. v. L. & N. R. R. Co., 22 I. C. C. 488, 493, as follows:

As a result of the discussion the carriers seem finally to have taken the position that rates on sulphuric acid should be substantially the same as the fertilizer rate, upon the theory, apparently, that the completed fertilizer comes into competition with the acid.

To this idea we can not subscribe. So far as the case shows, fertilizer does not compete with sulphuric acid nor is it manufactured at the point where this acid originates. The value of the fertilizer distributed throughout the south is from $15 to $20 per ton at the plant. The value of this sulphuric acid is $5 per ton at the point of origin. It is strictly a raw material and we think that distinctly lower rates should be applied for the transportation of these commodities from the point of origin to point where they are finally used than that upon the manufactured fertilizer.

It will be observed that most of the commodities with which comparisons are made load much heavier than does fertilizer, and the carriers contend that it costs little if any more to handle a carload of this heavy traffic than it does to handle a carload of fertilizer. In this connection the shippers claim that the per-car revenue on coal is, as a rule, greater than that on almost any other article. This claim was questioned by the carriers, but no examples could be given at the time of commodities producing higher earnings. In any event, it should be borne in mind that on a per-train basis a greater number of carloads of fertilizer could be handled than of coal, and there is no doubt but that a carload of coal displaces a greater tonnage of miscellaneous freight than does a carload of fertilizer, and in many cases might preclude the contemporaneous handling of the other more valuable but lighter traffic. In other words, too much weight should not be given to the car-mile earnings on these heavy commodities—other transportation elements, such as ton-mile earnings, must be taken into consideration. If the rates on lighter loading commodities were adjusted, because of their value, so as to produce per-car returns higher than on this heavy-loading but lower-grade traffic, the rates

on the former would be in many cases inordinately high. For example, in order for the transportation of cattle to be as remunerative on a per-car basis as that of cement in central territory, the rates on the former would have to be around 38 cents per 100 pounds for a haul of 100 miles, instead of 19 cents as proposed in the scale approved in Live Stock to, from, and between Points in Southeast, 74 I. C. C. 419. Moreover, it should not be overlooked that the carriers propose to maintain a minimum carload weight of not less than 20 tons (40,000 pounds) on most of the fertilizer materials, and it is probably safe to assume that the actual loading exceeds this minimum. A witness for the shippers stated that his investigation showed that shipments of materials moving to fertilizer plants averaged 35 tons, and in New Orleans Joint Traffic Bureau v. A. & V. Ry. Co., 89 I. C. C. 223, it is said that the actual loading of nitrate of soda exceeds 25 tons.

The carriers direct attention to the seasonal character of the fertilizer movement, practically 50 per cent of the yearly tonnage moving during the months of March and April, and they assert that this is one of the most strenuous traffic [fol. 966] periods of the southeastern roads. Because the bulk of the tonnage must needs be transported during a limited period, the expense of handling it, it is claimed, is greater than it otherwise would be. In this connection it is pointed out that at the more important manufacturing points it is necessary, at the beginning of the season, to assemble a considerable number of empty cars in anticipation of the movement. The principal shipping points are said to be located at terminals where the outbound business exceeds the inbound, and therefore it is necessary to bring in empty equipment. At Charleston, where there are located 14 plants, some 600 cars are accumulated at the opening of the shipping season, and as many as three to four hundred are kept on hand to take care of the needs at that point. A study made at Charleston covering the period from December, 1923, to April, 1924, disclosed that the average delay to cars at that point was 7 days per car. The expense of switching to and from the plants is claimed to be heavy, and in this connection attention is directed to the showing made by the carriers in South Carolina Fares and

Charges, 60 I. C. C. 290, 301, to the effect that this cost at Charleston approximated $5.94 per car. During the height of the season there are employed in switching to and from the fertilizer plants at that point 7 extra engines and crews and other necessary help, the cost of which is said to approximate $14,200 per month. These conditions seem to obtain principally at Charleston and Savannah, Ga., and to some extent at Norfolk, Va., and at a few interior points, but the situation at Charleston was the only one on which particular emphasis was laid. The shippers attempted to bring out, and with some success, that the fertilizer movement occurs at a time when other traffic is not heavy and when there is to some extent a surplus of equipment. It seems to be conceded by the carriers that contemporaneously there is at least no peak movement of any other commodity.

Some testimony was offered by the carriers with respect to the contaminating effect which mixed fertilizer has on the cars in which it is transported. They contend that because of the odor many commodities cannot be loaded in cars that have been used for fertilizer traffic until some time has elapsed and the cars have been cleaned. Tobacco and sugar are particularly susceptible to contamination, and grain and other commodities have also been known to have been damaged. Just how serious this feature is in actual practice is not satisfactorily disclosed. The carriers emphasize and the shippers minimize its importance. The latter point to the many commodities that would not be affected, and claim that for the most part the materials have little or no offensive odor, which seems to be true. However, it was stated by one of the shippers' own witnesses that about 70 per cent of mixed fertilizer contains tankage or fish scrap or both, and has a decided odor.

The Shippers' Proposal

The shippers' side of the case was presented largely by representatives of manufacturing organizations, members of the National Fertilizer Association. The Alabama Public Service Commission also took an active and important part in support of the rates and principal contentions advanced by the shipping interests. Testimony was offered

on behalf of the Kentucky Railroad Commission, a statement was made by one of the North Carolina Commissioners, and helpful cross-examination was conducted by members of the Florida, Georgia and Mississippi Commissions. The manufacurers are one with the carriers in urging uniformity in the rates, and in fact no interest advocated a different theory. The predominant issue raised by the shippers is with respect to the level of the rates. They contend that the Royster Scale was discarded by this commission [fol. 967] in its decision in Blackshear Mfg. Co. v. A. C. L. R. R. Co., 87 I. C. C. 654, involving rates on fertilizer from Blackshear, Ga., to points in Florida, and in support of this contention quote from page 662 of that decision as follows:

The cases * * * in which the Royster scale was prescribed or approved were decided on the records then before us and solely for the purpose of disposing of the very narrow issues which those cases presented. It does not follow that the same scale should be accepted as the final measure of rates to be applied generally throughout the Southeast or that the rates from Georgia to southern Florida should be constructed by superimposing upon that scale an increase to reflect the less favorable transportation conditions in southern Florida.

They point also to the further statement made at page 663 of the report in that proceeding, namely:

It has been generally recognized for years that transportation conditions in the Southeast do not warrant any higher basis of rates than in the Southwest, and rates in the Southeast are in many cases lower than in the Southwest. The 9702 Memphis-Southwestern Investigation, 77 I. C. C. 473, fertilizer scale was prescribed or approved in a comprehensive proceeding for application, intrastate and interstate, in Arkansas and between Arkansas, southern Missouri, and western Louisiana, and presents a fairer guide for determining maximum rates on fertilizer from Blackshear to Florida points than does the Royster scale which was originally prescribed for traffic moving between comparatively few points in the Southeast.

These statements, it is urged, warranted the Alabama Commission, when it had the matter of fertilizer rates before it in 1924, in accepting the scale prescribed in Docket No. 9702 as representing reasonable maximum rates in the Southwest, and in holding that something lower might appropriately be adopted east of the Mississippi River. The greater fertilizer tonnage moving in Alabama was also given consideration. That commission accordingly promulgated rates which averaged 87.3 per cent of the single-line rates and 89.1 per cent of the joint-line rates prescribed in the Memphis-Southwestern Investigation. But instead of adopting the minimum weight of 15 tons prescribed in that case on mixed fertilizer, the Alabama Commission, because of the average loading in that State, adopted a minimum of 20 tons. Wherever the minimum on materials was less than 40,000 pounds, it was increased to that loading, except in the case of cottonseed hulls which was continued at 15 tons. The rates, as well as the minimum weight, which the shippers now propose are the same as those prescribed by the Alabama commission, and are as follows:

Miles	Shippers' Proposed single line rates	Revenue per ton-mile (a) (Cents)	Revenue per car-mile (a) (b) (Cents	Shippers' Proposed joint line rates	Revenue per ton-mile (a) (Cents)	Revenue per car-mile (a) (b) (Cents)
5 and under	$ .80	16.	320.	...	...	...
10 and over 5	.90	9.	180.	$1.20	12.	240.
15 " " 10	1.00	6.7	133.	1.30	8.6	173.
20 " " 15	1.10	5.5	110.	1.40	7.	140.
25 " " 20	1.20	4.8	96.	1.50	6.	120.
30 " " 25	1.25	4.17	88.3	1.55	5.17	103.
35 " " 30	1.30	3.71	74.2	1.60	4.57	91.4
40 " " 35	1.35	3.37	67.5	1.65	4.13	82.5
45 " " 40	1.40	3.11	62.2	1.70	3.78	75.6
50 " " 45	1.45	2.9	58.	1.75	3.5	70.
55 " " 50	1.50	2.73	54.5	1.80	3.27	65.5
60 " " 55	1.55	2.58	51.7	1.85	3.08	61.7
65 " " 60	1.60	2.46	49.2	1.90	2.92	58.5
70 " " 65	1.65	2.36	47.1	1.95	2.78	55.7
75 " " 70	1.70	2.27	45.3	2.00	2.67	55.3
80 " " 75	1.75	2.19	43.8	2.05	2.56	51.3
85 " " 80	1.80	2.12	42.4	2.10	2.47	49.4
90 " " 85	1.85	2.06	41.1	2.15	2.39	47.8
95 " " 90	1.90	2.	40.	2.20	2.32	46.3
100 " " 95	1.95	1.95	39.	2.25	2.25	45.
110 " " 100	2.05	1.86	37.3	2.35	2.14	42.7
120 " " 110	2.15	1.79	35.8	2.45	2.04	40.8

Miles	Shippers' Proposed single line rates	Revenue per ton-mile (a) (Cents)	Revenue per car-mile (a)(b) (Cents)	Shippers' Proposed joint line rates	Revenue per ton-mile (a) (Cents)	Revenue per car-mile (a)(b) (Cents)
130 and over 120	2.25	1.73	34.6	2.55	1.96	39.2
140 " " 130	2.35	1.68	33.6	2.65	1.89	37.9
150 " " 140	2.45	1.63	32.7	2.75	1.83	36.7
160 " " 150	2.55	1.59	31.9	2.75	1.72	34.4
170 " " 160	2.65	1.56	31.2	2.85	1.68	33.5
180 " " 170	2.75	1.53	30.6	2.95	1.64	32.8
190 " " 180	2.85	1.5	30.	3.05	1.61	32.1
200 " " 190	2.95	1.48	29.5	3.15	1.58	31.5
210 " " 200	3.05	1.45	29.	3.25	1.55	31.
220 " " 210	3.15	1.43	28.6	3.35	1.52	30.5
230 " " 220	3.25	1.41	28.3	3.45	1.5	30.
240 " " 230	3.35	1.4	27.9	3.55	1.48	29.6
250 " " 240	3.45	1.38	27.6	3.65	1.46	29.2
260 " " 250	3.55	1.37	27.3	3.75	1.44	28.8
280 " " 260	3.65	1.3	26.1	3.85	1.38	27.5
300 " " 280	3.75	1.25	25.	3.95	1.32	26.3
320 " " 300	3.85	1.2	24.1	4.05	1.27	25.3
340 " " 320	3.95	1.16	23.2	4.15	1.22	24.4
360 " " 340	4.05	1.13	22.5	4.15	1.15	23.1
380 " " 360	4.15	1.09	21.8	4.25	1.12	22.4
400 " " 380	4.25	1.06	21.3	4.35	1.09	21.8
420 " " 400	4.35	1.04	20.7	4.45	1.06	21.2

440 " "	420	4.45	1.01	20.2	4.55	1.03	20.7
460 " "	440	4.55	.99	19.8	4.65	1.01	20.2
480 " "	460	4.65	.97	19.4	4.75	.99	19.8
500 " "	480	4.75	.95	19.	4.85	.97	19.4
525 " "	500	4.85	.92	18.5	4.85	.92	18.5
550 " "	525	4.95	.9	18.	4.95	.9	18.
575 " "	550	5.05	.88	17.6	5.05	.88	17.6
600 " "	575	5.15	.86	17.2	5.15	.86	17.2
625 " "	600	5.25	.84	16.8	5.25	.84	16.8
650 " "	625	5.35	.82	16.5	5.35	.82	16.5
675 " "	650	5.45	.81	16.2	5.45	.81	16.2
700 " "	675	5.55	.79	15.9	5.55	.79	15.9
725 " "	700	5.65	.79	15.6	5.65	.79	15.6
750 " "	725	5.75	.77	15.3	5.75	.77	15.3
775 " "	750	5.85	.76	15.1	5.85	.76	15.1
800 " "	775	5.95	.74	14.9	5.95	.74	14.9
[fol. 969]							
825 and over	800	6.00	.73	14.5	6.00	.73	14.5
850 " "	825	6.05	.71	14.2	6.05	.71	14.2
875 " "	850	6.10	.70	13.9	6.10	.70	13.9
900 " "	875	6.15	.68	13.7	6.15	.68	13.7
925 " "	900	6.20	.67	13.4	6.20	.67	13.4
950 " "	925	6.25	.66	13.2	6.25	.66	13.2
975 " "	950	6.30	.65	12.9	6.30	.65	12.9
1000 " "	975	6.35	.64	12.7	6.35	.64	12.7

(a) The earnings shown are based on the greatest mileage in the individual blocks.
(b) Based on minimum carload weight of 40,000 pounds.

[fol. 970] For convenient reference the Memphis-Southwestern scale is shown in Appendix D.

Like the carriers, the shippers urge their scale for uniform application throughout the southeast,—no contention is made that different rates should apply in different sections. They do contend, however, that the strict distance scale should be departed from in a few cases. One situation is that existing at Atlanta. Here there are various manufacturing plants in the outlying districts, and it is the thought that these plants should be grouped, the average distance from the group fixing the rates to be used. Other similar situations should be similarly treated. Neither should the distance scale, it is said, be applied on certain materials. For example, sulphate of ammonia is produced in the southeast only in the Birmingham district, and rates should be adjusted on this commodity, it is suggested, in competition with rates from the steel mills in the north. But on the whole, the shippers favor the strict observance of a distance scale.

One of the shippers' principal witnesses admitted that the rates proposed by them are, with the exception of rates in Mississippi and for short distances in Georgia, lower than any other fertilizer rates in the south which have been prescribed either by this commission or by the State Commissions. The low basis of rates in Mississippi is due, the carriers say, to two causes: (1) to the extremely low rates originally established by the carriers operating in that section to encourage agricultural development, and (2) to the rates suggested or prescribed by the Mississippi commission. Attention is called to the fact that during a period of over 25 years, the only revisions made in the fertilizer rates in Mississippi have been those occasioned by the general rate cases.

Many individual cases are shown by a witness for the Alabama commission where the shippers' proposed scale will result in increased rates. These include rates from the principal points in Georgia and from Chattanooga, Tenn., to destinations in Alabama, and from Nashville and Memphis, Tenn., to points in both Alabama and Georgia. Out of 69 rates shown from Atlanta, 41 would be increased under the shippers' proposed scale, and 27 reduced. Out of 74 rates from Nashville, 49 would be increased and 23 re-

duced. On the other hand, out of 62 rates shown from Athens, Ga., only 14 would be increased while 48 would be reduced. Taking the showing as a whole, it is found that of over 700 rates set forth 46 per cent will be increased under their scale, the increases running anywhere from small amounts to as high as $1.30 per ton, the latter obtaining in the joint rate from Memphis to Tuscaloosa, Ala., 238 miles. The joint rate from Atlanta to Blocton, Ala., would also be increased as much as $1.12. Similar data by other witnesses was submitted covering rates from the same and a number of other points. For example, the present rates from Charleston, S. C., to points in Georgia on the Atlantic Coast Line and Atlanta & West Point were shown in many cases to be lower than the proposed scale. Likewise many of the present rates from Birmingham and Montgomery to points in Florida; from McCarty, Tenn., to destinations in Alabama, Mississippi and Tennessee, and from still other points, were shown to be on a lower basis than that proposed by the shippers. In fairness to the shippers it should be said that their exhibits also set forth many specific rates that are higher than their scale,—the attempt seems to have been made only to show that there are a goodly number of situations where rates are maintained on a lower basis than they are proposing. Rates from St. Louis, Memphis, and Nashville to points in Mississippi and to New Orleans and Mobile, established as the result of the commission's findings in I. & S. 1303, are also compared with the shippers' proposed scale. The rates [fol. 971] shown from St. Louis and Nashville are in all cases but two lower than the proposed scale, and the latter is lower in the great majority of cases than the rates from Memphis. As heretofore stated, however, the carriers contend that the rates prescribed in the foregoing proceeding were not fixed as reasonable maximum rates, and refer to expressions by us to that effect.

The shippers also compare their proposed scale with the rates on various commodities. Those on cabbage and potatoes, petroleum, cotton piece goods, and iron and steel articles are, in almost all cases, considerably in excess of their proposed rates. The rates shown on live stock between points in North Carolina are slightly higher, as are also the intrastate rates on cement in Georgia and Ala-

bama. Rates lower than the proposed fertilizer scale are shown to be in effect on cement from Birmingham to interstate destinations; on lumber from Georgia points to Birmingham and Chattanooga, and from Alabama points to Atlanta, Chattanooga, Memphis and Nashville; on coal from Dante, Va., to Carolina territory, and from Jellico, Tenn., to southern points generally; on sand and gravel via various lines; and on brick from Chattanooga to Georgia points. Mention should be made of the fact that the rates on lumber are, in many cases, not only lower than the shippers' proposed scale, but, based on the minimum carload weights, produce lower car-mile earnings. Like similar comparisons of the carriers, the shippers' showing is not in any way decisive. It simply shows that there are rates on various commodities which are both higher and lower than the scales proposed by either the carriers or the shippers. The shippers admit, and in fact urge, that such comparisons are not entitled to great weight, by reason of the different methods used in making the respective adjustments, and because of the fact that in some cases the older systems of rate-making still govern.

The carriers contend that the Alabama scale, the basis of the shippers' proposed rates, is unduly low and has been influenced and governed by the rates fixed by the Georgia commission for application in the latter state. In 1907, the Alabama legislature passed a statute which, it is said, prescribed the same mileage scale of rates on fertilizer as was then in effect in the State of Georgia. This action, the carriers say, was taken without any public hearing and resulted in substantial reductions. This scale, subject to the subsequent general rate changes, remained in effect until July 25, 1924, when the Alabama commission promulgated the present intrastate scale, as heretofore explained, and which resulted in average reductions from the previous rates of about 7 per cent. The prior rate for 100 miles, for example, was $2.14, and the present rate is $1.95. For distances of from 240 to 310 miles, the reductions did not exceed 2 per cent, and, in fact, in this block there were four instances of slight increases.

The Railroad Commission of Georgia was established in 1879 and was the first body of this kind created in the south.

In 1880 that commission prescribed rates on fertilizer, any quantity, graded in 10-mile blocks from $1 for the first 10 miles up to $3.40 for 350 miles. At 50 miles, the rate was $1.60, at 100 miles $2, and at 150 miles $2.20. The carriers emphasize that the Georgia commission, itself, subsequently held this scale to be too low, for in 1882 it increased the rates 20 per cent, and in explanation of this change made the following statement in its annual report for that year:

After a trial, covering a period of several months, the Commission believed that their standard rate for transportation of manufactured fertilizers was, at that time, too low. This resulted from the great expense to the railroads, consequent upon storage, detention of cars, etc. In view of this, the Commission concluded to temporarily advance the rates on fertilizer, * * *.

[fol. 972] The carriers point out that the Georgia commission in 1884, regardless of the above admission, again reduced the rates on carload shipments to a basis that, for distances up to 80 miles, ranged from 4 to 28 cents per ton under the rates originally established in 1880, although slightly higher than those rates for distances over 80 miles. And they call attention to that commission's report for 1888 in which the low character of the rates was recognized in the following language:

We have prescribed low rates * * * for naval stores, for lumber, for all articles manufactured in the State and the raw material used in their manufacture, for cotton and other agricultural products, for provisions and fertilizers, and for the articles that enter into the daily wants of the people. We have thus endeavored to promote the railroad, the manufacturing, the agricultural, the commercial and all the business interests of the State.

In 1890 the rates were again reduced approximately 16-2/3 per cent, and in 1897 about 10 per cent. In the latter year the rate for 10 miles was fixed at 72 cents, for 50 miles at $1.08, and for 100 miles at $1.53. The rates for the corresponding distances fixed by the Georgia commission in 1880 were, respectively, $1, $1.60, and $2. Changes were made at various times in the basis accorded the short lines in

that State and in the method of making joint rates, which it is unnecessary to set forth. The rates prescribed in 1897, as modified by the subsequent general increases, are still in effect as maximum rates. And it is on this admittedly low scale, the carriers contend, that the Alabama rates were originally predicated, and these, in turn, are the basis for the shippers' proposed rates in this proceeding.

The answer of the shippers to the foregoing argument has already been indicated. It is in substance that the Alabama commission, when it adopted the present scale in 1924, took as its guide the Memphis-Southwestern scale prescribed by this commission for application in the southwest, and, because of statements made in the Blackshear and other cases relative to the respective rate levels and transportation conditions in the territories west and east of the Mississippi River, it adopted rates as much lower than the Memphis-Southwestern scale as it deemed warranted by the greater traffic density and other conditions obtaining in its State. Furthermore, the Alabama commission points to the fact that in the Blackshear case this commission prescribed the Memphis-Southwestern rates from Blackshear to points in Florida on and north of the Jacksonville-River Junction line for distances up to 240 miles, and even to points 155 miles south of Jacksonville the rates were made but 10 cents per ton higher than the Memphis-Southwestern scale. It must be admitted, they claim, that the transportation conditions into Florida are much less favorable than in Alabama, and the above distance of 240 miles well exceeds the average haul in the latter State.

As the position of the shippers is understood, however, not so much stress is laid on rate comparisons to sustain their proposed scale as upon the economic advantages accruing through the use of fertilizer, and the absolute need of its use in order that southern agriculture may be at all successful. Counsel for the principal shipping interests said, in part, in his opening statement:

[fol. 973] In the main, the shipper elements in the case have started with the presumption that * * * such a revision of rates as might result from this proceeding would at least involve no aggregate increase in the revenue yielded by the existing charges. Practically no evidence

will be directed as such to the sustaiping of that premise or point of view which is the starting point in the case, but rather the evidence will be directed more particularly to those phases in the case which conceivably in the point of view of the shippers' minds perhaps justify some consideration in the wind-up of an average rate level less than would be yielded by the existing transportation charges.

On brief he said:

* * * the issue is to be understood as consisting alone of divergent views as to what may be considered a logical and fair distribution of the total traffic burden as between fertilizer and other descriptions of freight.

The vice-president of the American Farm Bureau Federation stated that bureau's position in the following language:

We * * * respectfully ask this Commission to take into account the fact that in its work of gradually remaking the freight rate structure in this country the Commission should give a fair regard to the peculiar uses of different articles and so distribute the total transportation burden as will impose a fair relative part upon agriculture. In other words, in considering the proper disposition of this case involving as it does an article of direct importance in agriculture we urge the Commission to find from the evidence the extent to which sound national economy would justify the making of as low rates as consistently can be done on this particular article.

And one of the principal witnesses for the shipping interests stated at the outset of his testimony:

By reason of the fact that the traffic test[1] covering fertilizer has been made, not so much importance is to be attached to the comparison between various existing and proposed fertilizer rates. However, in the proceedings, the carriers presented numerous exhibits in which such comparisons were made. It seems at least justifiable to present in this record other comparisons, if for no other reason,

[1] The traffic test covering the fertilizer movement which the carriers were asked to make will be referred to and discussed later.

that the two sets of exhibits will enable the Commission, if it so desires, to locate the higher and lower rate areas.

From the foregoing, however, it is not to be understood that the shippers are urging the financial necessities of the southern farmers. Counsel states in his brief that "there is no clash as between impoverished railroads and destitute agriculturists"; that the conclusion in this proceeding need not "depend on any thought that Southern agriculture is undertaking to secure or expects a subsidy in the way of lower transportation charges upon fertilizer than would otherwise be warranted by sound considerations of economics and logical rate making."

[fol. 974] While the condition of agriculture is not stressed as a ground for the special treatment of fertilizer rates, it is nevertheless of interest to note the testimony in this respect offered by the agricultural statistician of the Alabama Extension Service, who is also connected with the Federal Government. This witness stated that in 1924 the farmers of Alabama lacked $34,000,000 of receiving the full wage rate paid to farm workers, or about $130 per farm. In Georgia, the farmers lacked $112,000,000 of receiving the normal wage, or approximately $350 per farm. In contradistinction to this situation, he showed that the farmers in Texas and Oklahoma not only received the full wage rate, but a profit besides amounting to $81,000,000 in the former State, and to $84,000,000 in the latter. In these States it is pointed out that the soil requires little or no fertilization; and it was the view of this witness that if the southeastern farmer expects to compete successfully with cotton raisers in Texas and Oklahoma it would be necessary for the former substantially to increase his yield per acre, which can be done in no easier way than by the increased use of commercial fertilizers. It is his belief that around 4,000,000 tons of fertilizer could be profitably used in the State of Alabama alone, provided it could be bought at a reasonable price, instead of but 580,000 tons as used in 1925. In this connection, the shippers contend that since the item of labor is comparatively small in the manufacture of fertilizer, it is chiefly the combined cost of transportation, raw materials, and sales distribution which controls the prices.

The prices of only a few of the principal raw materials are shown of record. Nitrate of soda is said to be worth from $50 to $60 per ton, but apparently not over 150 pounds is used in a ton of mixed fertilizer, and in many cases a much lesser amount, the balance of the ammonia or nitrogen content being supplied by tankage, sulphate of ammonia, cottonseed meal, etc. Imported potash salts ranged in 1924 from about $6 per ton for kainit to around $40 per ton for sulphate of potash. The potash salts in a ton of mixed fertilizer do not ordinarily exceed 15 per cent of the total weight. The average price of cottonseed meal at the southern markets in 1923 appears to have been slightly over $40 per ton, and at the time of the hearing in September, 1925, was said to be around $35. Acid phosphate, which makes up over 60 per cent of the weight of a ton of fertilizer, was shown to average about $12 per ton. The average inbound freight charges on fertilizer materials was shown to run from $1.96 per ton at Charleston, S. C., to $4.08 at Spartanburg, S. C., and the average outbound charges on the mixed fertilizers ranged from $1.545 from Hartsville, S. C., to $3.68 from Nashville, Tenn. The total inbound and outbound charges averaged from $4.48 at Mobile to $6.19 at Atlanta. As the cash price of mixed fertilizers ranges from $25 to $40 per ton, depending on the grade, it will be seen that the freight charges make up from about 12 to over 20 per cent of the total price asked.

The carriers minimize the importance of the freight charges so far as the farmer is concerned. They state, first, that the credit price exceeds the cash price by from 25 to 33-1/3 per cent, and that many of the smaller farmers purchase their fertilizer on the credit plan. They point out, further, that the average price of fertilizer in the southeast for 1925 exceeded that for 1924 by nearly $4 a ton, amounting in an aggregate increase in price, based on the total consumption, of nearly $18,000,000. But regardless of this price increase, the consumption of fertilizer on the cotton acreage in 1925 exceeded that in 1924 by over 200,000 tons. It is their position that these two items alone are of as much or more importance to the farmer than the freight rate, and that any reasonable cut in the freight charges would amount to so little to the individual that it would have no effect either upon the use of fertilizer or upon the farmers'

[fol. 975] prosperity. Assume, for example, that the shippers' scale were adopted instead of the carriers', resulting in a rate for a 100-mile haul 64 cents lower than the carriers' scale. On a farm of 100 acres, and using 345 pounds of fertilizer per acre, the average in South Carolina in 1924, the lower rate would result in a total saving of but $11.04. This figure does not, of course, take into consideration any reduction in the price of fertilizer which the lower basis of inbound charges might have a tendency to bring about. In this connection, the carriers direct attention to the statement made on the stand by the vice-president of the American Farm Bureau Federation, when he said:

• • • no effort is here being made to say that the volume of fertilizer to be consumed would be greatly more or less dependent upon the measure of freight rate levels which will result from this proceeding.

Furthermore, the carriers urge that even if a reduction in the freight rates were brought about, the farmer would derive little or no benefit therefrom. This view finds considerable support in the record. For example, they point to that has already been shown, namely, that the fertilizer prices increased in 1925 over those for 1924 without any change in that direction in the freight rates. And if 1924 is objected to, because of the abnormal conditions which are said to have existed in the industry at that time, a similar comparison, though not so marked, may be made between the prices for 1925 and those for 1923,—and here, too, with no upward trend in the freight rates during that period. On the other hand, they point out that although reductions were made in the intrastate rates in South Carolina and Alabama in 1924, no corresponding reductions have since been made in the selling price of fertilizer in those States. An instance is cited where the freight rate from Dothan, Ala., to the last station in that State on the Alabama, Florida & Gulf was $1.71, with a rate of $2.37 to the first station on that line in Florida, a difference in the rates of 66 cents per ton. Yet the price of fertilizer was the same at the two stations. This uniformity in price is probably accounted for by the competitive system in vogue generally in the southeast. It appears that the delivered price of fertilizer at any interior point is determined by the f. o. b. price at the

nearest port plus the freight rate thence to the particular destination. The price so fixed, it is understood, is maintained by most of the manufacturers regardless of their location.

It is contended by the carriers that the price of crops for the preceding season is really the controlling factor in determining the amount of fertilizer used in the succeeding year,—that when the price of cotton, for example, is high, the farmer increases the use of fertilizer, and when there is a crop failure or the price received is low, a corresponding drop in the use of fertilizer occurs. This is admitted by the agricultural statistician of the Alabama Extension Service to be a considerable factor in determining the fertilizer consumption. On cross-examination he stated:

It has been noted from statistical studies that there is a very decided correlation between the price of cotton and the price of fertilizer, and relatively in the use of fertilizer. When cotton is high, it seems that the price of fertilizer has to some extent followed it, and the farmer has not been prevented from using it by high prices, so long as the price of cotton is high. The farmers' psychology depends very largely on the price of cotton.

[fol. 976] An exhibit of record shows that in 1913 the price of cotton in North Carolina was 12.6 cents per pound. In 1914, the price dropped to 6.9 cents, and in the following year the fertilizer used in that State fell off over 225,000 tons. From that time on the price of cotton rose until it reached 35.2 cents in 1919, and in the following year, 1920, 1,221,796 tons of fertilizer were used on cotton in North Carolina as compared with 647,188 tons in 1915. In 1920 the price of cotton went down to 14.5 cents, and in 1921 the consumption of fertilizer in that State fell to 695,542 tons. The prices of mixed fertilizers during this period do not seem to be shown of record, but nitrate of soda and sulphate of ammonia in 1921 seem to have sold for considerably less than in 1920, and at about the same price as in 1914.

In rebuttal of the claim that the farmer will not benefit from a possible rate reduction, shippers state that farm organizations are gradually springing up throughout the south, and that through cooperative buying, which these

organizations make possible, the farmer not only obtains his fertilizer at a lower price but would in most cases secure directly the benefit of any reduction in the delivery charges. It is stated that the Alabama Farm Bureau Federation purchased and distributed to its members in the spring of 1925 approximately 81,000 tons of fertilizer of all kinds. Most of this tonnage consisted of fertilizer materials, which the farmers, themselves, mixed, and which practice, it is said, results in considerable economy.

But regardless of the method of buying, we can but assume that a reduction in the transportation charges would, in some degree, affect the price of fertilizer to the consumer. It is an element in the cost of manufacture, and a reduction in such cost can have but one of three results,—either a reduction in the selling price, an increase in the manufacturer's profits, or both. In any event, it is the commission's concern in this proceeding to reach such an adjustment as, under all the circumstances, will reflect as nearly as may be the importance of this commodity to the agricultural industry, and through its use, the resultant increase in tonnage to the serving carriers.

As already stated, the shippers propose in connection with their scale to apply a minimum carload weight of 20 tons instead of 15 tons as proposed by the carriers. It is understood that their proposal includes also increasing the minimum of all materials, where now lower, to this loading, except cottonseed hulls which are to be continued at 15 tons. And this increase in minimum, they urge, should be taken into consideration in fixing the rate level. The higher minimum is now applicable on intrastate traffic in Alabama, and has the unqualified approval of the vice-president of the American Farm Bureau Federation. Attention is directed to the fact that at the time the 15-ton minimum was adopted in the Royster case the average loading was shown to be but 17 tons, while at the present time the average loading is considerably in excess of that figure. During the month of March, 1925, the average loading of mixed fertilizers from 18 of the principal manufacturing points in the south ran from approximately 21 to 29 tons. An analysis of these figures shows that out of a total of 3,934 cars, 1,087 loaded below 20 tons and the balance above, even though in most of the south the minimum

is 15 tons and in some cases as low as 10 tons. By the carriers' own showing, the average loading in 1923-1924 on Class I roads in southern territory was a little over 23 tons. Based on the increase in the average car loading of 6 tons over that in 1913, it is estimated that it required 61,000 less cars in 1925 to transport the 4,000,000 tons of fertilizer consumed in the south in that year than it would have required had the average loading remained as in 1913. There seems [fol. 977] to be no doubt but that the loading is limited only by commercial needs and conditions. It was stated that it is physically possible, though perhaps not feasible, to load to the full capacity of the car. The carriers question the wisdom of increasing the minimum. They seem to fear that the farmers, in most instances, will object to such increase, and that considerable discontent will be engendered. The only specific objections to the 20-ton minimum came from three manufacturers located in Florida where, at the present time, any-quantity rates prevail, and from a farmer of Sumter, S. C., who stated that the users in his section objected to a greater minimum than 15 tons. This latter objection is apparently raised because of the possible difficulty in getting a sufficient number of individuals to combine to order the larger carload.

The increase in minimum, so far as fertilizer materials are concerned, will apparently cause little change in actual trade practices. The minima as proposed by the carriers, which are those carried in the current consolidated classification, are in many instances on the basis of 20 tons or higher, and it is stated that the average loading of materials is around 35 tons. The principal materials, such as sulphate of ammonia, dried blood, cottonseed meal, acid phosphate, the potash salts, and tankage, now take the 20-ton minimum, and the carriers are proposing to continue these commodities on that basis. Nitrate of soda is also accorded a minimum of 40,000 pounds in the classification, but it is stated that there is a considerable import movement from the south Atlantic ports to South Carolina destinations on a minimum of 10 tons, and there is some movement of materials on this basis between other points in the same general section.

It would seem that the time has come when an increase in the minimum carload weight on this traffic may very properly be made. Certain it is that on this record there is shown no pronounced objection to the higher minimum, but on the contrary a rather favorably disposed attitude is, on the whole, manifested. This minimum loading, if adopted in Florida, may at first cause some inconvenience and a readjustment in commercial usages. Any-quantity rates are now in effect on intrastate shipments of mixed fertilizer in that State, and it is possible that some little time may be required for the users to accommodate themselves to the carload basis. In fact a manufacturer at Orlando, Fla., stated that it was his opinion that a 20-ton minimum would work a hardship on many small truck growers who would be unable to use that amount. In the Blackshear case, supra, involving rates into Florida, a minimum of 30,000 pounds was prescribed, and no complaint on this score has come to the commission's attention; in fact such expressions as came from that State indicated a willingness to adopt on mixed fertilizer that carload minimum, and a minimum of 20 tons on materials. It is hoped, however, for the sake of uniformity, that a fair trial of the 20-ton basis will be made.

While referring to the Florida adjustment, it should be said that the rates on materials in that State are on the basis of 75 per cent of the mixed fertilizer rates. The relationship was fixed by the Florida commission in order that manufacturers at inland points might more readily compete with plants at the port, and it is urged that any decrease in the spread between these rates and those on mixed fertilizers would be likely to force the interior manufacturer out of business. The intrastate situation in Florida is not of course directly involved in this proceeding, and the record does not warrant a final expression on the propriety of material rates differentially related to those on mixed fertilizer. Except on certain materials in North Carolina [fol. 978] which, subject to a minimum of 25 tons, are accorded rates 90 per cent of those on fertilizer, and except on kainit and acid phosphate in Georgia, which are likewise 90 per cent of the fertilizer rates, no other situation is brought to the commission's attention where the materials are granted a lower basis than that on mixed fertilizer. It

is, of course, possible that the industry in Florida is differently circumstanced than elsewhere in the south, and, therefore, merits an adjustment adapted to its peculiar needs.

A representative of the Florida East Coast urged a higher basis of rates in connection with traffic into Florida than for the balance of the southeast, and also considered his road entitled to rates somewhat higher than might obtain on other lines. He submitted no concrete proposal, however, other than that interstate rates to points on his line should be maintained on the basis of the combination over Jacksonville, Fla. The record does not warrant special treatment of interstate shipments into that State.

Proposal of the Short Lines

The American Short Line Railroad Association on behalf of its southeastern members,[10] seeks a special basis of rates for these so-called weak lines because of their financial condition and limited traffic resources. The general basis of interstate rates on fertilizer to points on these short lines has been, and is, the full combination over the trunk line junction point. Intrastate rates are made, as a rule, on the combination basis less certain percentages which vary in the different States. In Georgia the full combination obtains. In Alabama, on the other hand, joint rates are made between trunk-line and short-line points which are 10 per cent higher than the joint trunk-line scale. The local short-line rates in that State are 20 per cent higher than the rates of the standard lines, and for joint short-line hauls there is added the same differential as obtains between the single and joint standard-line rates. The Alabama adjustment is the one which the shippers are proposing for general application.

The short lines seek approval of the full combination basis, but in any event not less than the Royster Scale, single or joint line, as the case may be, plus an arbitrary of 50 cents per ton, this arbitrary to accrue solely to the participating short-line carrier.

There are other roads, not members of the Short Line Association or individually represented, which likewise seek special consideration. These are:

[10] See Appendix E for a list of the lines referred to in the records.

(1) The Columbus & Greenville Railway, a line 167 miles long extending from Columbus to Greenville, Miss. It desires to maintain the full combination basis, with local rates not less than the Royster Scale.

(2) The Gulf, Mobile & Northern, and its subsidiary, the Birmingham & Northwestern, the former extending from Mobile, Ala., northerly through Mississippi to Jackson, Miss., 408 miles, and the latter extending from Jackson to Dyersburg, Tenn., 48 miles. These roads desire to maintain rates to their local stations made 50 cents a ton higher than the scale adopted for general application.

[fol. 979] (3) The Alabama, Tennessee & Northern, extending from Calvert, Ala., northward to Reform, Ala., 186 miles, and its subsidiary, the Alabama & North Western, extending from Pine Hill, Ala., to Coxheath, Ala., 24 miles. These roads likewise ask for an arbitrary of 50 cents per ton over the Royster Scale.

(4) The Norfolk Southern, the main line of which extends from Norfolk, Va., to Charlotte, N. C., 400 miles. Of its total main and branch line mileage of 932 miles, 115 miles are located in Virginia, and the balance in North Carolina. This carrier seeks rates made 10 per cent higher than the Royster Scale for single-line traffic, with the same differentials for joint-line traffic as are proposed by the carriers for general application.

(5) The Carolina Railroad and the Kinston Carolina Railroad, the former extending from its connection with the Norfolk Southern at Kinston, N. C., northward to Snow Hill, N. C., 15 miles, and the latter extending from the same junction point southward to Beulaville, N. C., 28 miles. The rates of these lines were fixed by the North Carolina commission, it is said, approximately 50 per cent higher than the Royster Scale, and they desire to continue this basis, with joint-line rates made full combination over their junction with the Norfolk Southern.

With respect to the Association lines it hardly seems necessary in this report to discuss the general situation with any particularity. They have been considered a number of times by this commission, and more recently in Southern Class Rate Investigation, 100 I. C. C. 513, where, except in a few instances, their necessities were recognized.

They have been given special treatment by most of the States, and, in fact, the shippers, on the whole, do not oppose according them liberal treatment. A financial statement for the year 1924 was submitted by their representative which showed the net railway operating income of these carriers to be in many cases in the red, and with few exceptions apparently far from adequate to afford the fair return fixed by this commission as reasonable under the law.

It was admitted that the Tampa & Gulf Coast is controlled by the Seaboard Air Line and that its earnings, as the result of being a part of a through route, approximated 10 per cent in 1924; that the Live Oak, Perry & Gulf is controlled, through stock ownership, by the Atlantic Coast Line, and that the East & West Coast, the Florida Central & Gulf, and Tampa & Northern are subsidiaries of the Seaboard and operate continuous distance rates in connection with that carrier. With respect to the Live Oak, Perry & Gulf, it was said that within the next six months two of the largest saw mills on its rails would be abandoned, and that at the present time 95 per cent of its tonnage is lumber. Furthermore, it was anticipated that authorization to abandon the line would probably be sought in five years' time. This carrier was refused special relief in the Southern Class Rate case because of its excellent earnings.

The Carolina Railroad and the Kinston Carolina are likewise owned, through stock holdings, by the Norfolk Southern, but it is testified that they had never been operated as an integral part of the latter company, nor are their operating officers the same. As already stated, their special needs have been recognized by the North Carolina commission, in authorizing them to charge substantially higher rates than the standard scale in that State.

[fol. 980] Little evidence was submitted with respect to the financial needs of the Alabama, Tennessee & Northern. It was said that it operated at a deficit in 1924, but the Alabama commission contended that if its accounts were kept in accordance with this commission's regulations, and using the tentative value which has been announced, its earnings would be shown to be fully 5¾ per cent, and probably more.

As said in the Southern Class Rate case, most of the short lines are located wholly within the confines of a single State, and the respective State commissions are in a much better position than is this commission to determine their just needs. Should the respective State commissions feel at any time that the attitude of this body has been too liberal with respect to any of the roads under their jurisdiction, they can bring the matter to this commission's attention.

It should be said, however, that there is considerable doubt as to the financial needs of the following roads:

	Main line operated (miles)	Operating ratio (per cent)	Net ry. operating income	Total investment
Collins & Glennville	23	76	$4,304	$53,230
Georgia, Ashburn, Sylvester & Camilla	50	70	16,033	176,363
Georgia, Florida & Alabama	193	76	169,635	2,797,114
Lancaster & Chester	29	67	42,196	708,085
Louisville & Wadley	10	62	11,169	111,940
Marianna & Blountstown	43	67	16,327	195,457
Union Point & White Plains	14	54	6,559	94,923
Washington & Lincolnton	20	64	16,784	280,284
Alabama, Tennessee & Northern	186	(a)	(a)	(a)

(a) Not shown.

It is not proposed to recommend that these carriers be denied the relief which they seek, mention being made of them merely to direct the attention of the interested State commissions to a study of their condition.

With respect to the Norfolk Southern, this carrier now enjoys rates somewhat higher than the Royster Scale on intrastate traffic in Virginia, in North Carolina for the shorter distances, and on certain interstate traffic that is unaffected by the commission's findings in the Royster case. It was shown that for the years 1920 to 1924, both inclusive, its average operating ratio was 82.5 per cent, that its net railway operating income averaged $802,942, and that the average return on its total investment of over $35,000,000 has been but 2.24 per cent. Its net railway operating income per mile of line for 1923 was shown to have been $1,468 as compared with $3,374, the average for the entire southern region. No one opposed the basis sought by this carrier.

Before discussing the section 13 cases brought against the intrastate rates in Alabama, Georgia, and South Car-

olina, and certain exceptions to the general adjustment, it seems desirable first to reach a conclusion as to the proper level of rates for general application in this southern territory. In this connection, a study of the traffic test will be helpful.

[fol. 981] This traffic test was instituted by the carriers at the request of the commission for the purpose of determining as nearly as possible the effect upon the carriers' revenues, not only of the scale proposed by them, but of the shippers' scale as well. The months of March and April, 1925, were selected for the test throughout the territory involved, except in the State of Florida, where the month of February was taken. These months, it was believed, covered the height of the fertilizer movement in the respective sections, and embraced practically 50 per cent of the total movement for the year. The actual figures of the traffic test will be used in the following discussion, and should be doubled in order to arrive at approximate results on a yearly basis. The figures cover not only mixed fertilizers, but include fertilizer materials and imported materials as well. The movement of imported materials during the test period amounted to about 12.5 per cent of the total tonnage. It is shown that of the total tonnage of fertilizer and materials, amounting to 3,189,819 tons exclusive of Florida traffic, 70 per cent moved for distances of 150 miles and less. Of the single-line traffic, one-half moved for distances of 85 miles and less, and one-half of the joint-line traffic moved less than 140 miles. These figures bear out the statements of record that the hauls are comparatively short. The average haul of mixed fertilizers was said to be about 100 miles, and it was specifically shown that the average from the important manufacturing points in the southeast ran from 40 miles from Hartsville, S. C., to 181 miles from Charleston, S. C. From Atlanta, for instance, the average weighted haul of shipments made by Swift & Company was shown to be approximately 150 miles, and of shipments by the International Agricultural Corporation about 85 miles. From Montgomery, the average weighted hauls ran from 94 miles on single-line intrastate shipments to 185 miles on joint-line interstate shipments; and from Wilmington, N. C., the average weighted haul of the Atlantic Coast Line for 1923 was shown to have

been 89 miles on fertilizer shipments and 111 miles on materials. It is agreed that the average haul of materials substantially exceeds that of mixed fertilizers. For example, it was shown that from 13 plants located at 10 points in Alabama, the average outbound haul was but 51 miles, while materials moved inbound to the same plants an average distance of 355 miles. The inbound hauls will, of course, vary considerably depending on the location of the plant with respect to the principal source of its raw materials. It is believed that the average inbound haul to the foregoing Alabama manufacturers probably exceeds the average.

The traffic test showed that 2,154,422 tons, or 67 per cent of the total, moved single line, and 2,189,254 tons, or about 69 per cent, moved in intrastate commerce. Of the total revenue of $7,947,908, exclusive of Florida shipments, almost 60 per cent, or $4,753,932, accrued on intrastate traffic. At the same ratio that the intrastate tonnage bore to the total tonnage, the intrastate revenue would have been about $730,000 more than the figure shown.

The foregoing data does not take into consideration Florida traffic, either intra- or interstate. As heretofore stated, the Florida intrastate rates on mixed fertilizer are on an any-quantity basis, and for the purpose of the traffic test all shipments which loaded 10,000 pounds or over were considered carload lots and so rated, the revenues being determined on the actual weight. Through this segregation, and using the month of February, 1925, as representing about the peak period, 29,840 tons moving intrastate were rated as carload shipments, and 5,070 tons as less than carloads. The carload traffic moved in 1,817 cars, averaging a little over 16 tons to the shipment. 10,600 tons moved in interstate commerce, or about 26 per cent of the total carload tonnage. The total revenue on the carload traffic is shown to have been $122,586, of which $40,489, or one-third, accrued on interstate shipments.

[fol. 982] The traffic test shows that for the period covered the rates proposed by the carriers would result in an increase in revenue, exclusive of Florida, of $834,285, which, on a yearly basis, would result in a total of approximately $1,668,000. The proposed rates applied to the Florida tonnage for the month of February resulted

an increase in revenue of $17,097. The record is not
r as to what percentage of a year's business this show-
of one month represents—it is probably safe to assume
it is something less than one-half of what the result
uld be for a year. In view of the fact that the proposed
es approximate the present intrastate rates in Florida
to 170 miles, being in a number of cases even lower than
Florida scale, it is highly probable that a substantial
ount of the increase in that State would result from plac-
fertilizer materials on the same basis as mixed fer-
zers, the former now being accorded rates made 75 per
t of the latter. The carriers call attention to the show-
made, that, of the total increase exclusive of Florida, a
le over one-fourth, or $210,729, would accrue on traffic
ivered at destinations on the so-called short lines as to
ich a special and higher basis is sought.

As the result of a hurried computation, the carriers esti-
te that the shippers' proposed scale would result in a re-
ction in their revenues of not less than $636,146, or $1,272-
0 on an annual basis. On brief, counsel for the Alabama
nmission, although admitting that some reduction in
revenue of the railroads would likely occur under the
ppers' proposed rates, minimize the carriers' estimated
ount of such reduction. For one thing they urge that
full effect of their proposed higher carload minimum
s not taken into account, and they point further to the
owing of record that as the minimum weight has been
reased the actual loading has become correspondingly
eater, and has always exceeded the minimum in effect.
r example, in 1913 when the minimum was 10 tons, the
ual average loading from Norfolk was 17 tons, and
er the minimum had been fixed at 15 tons the actual
erage loading from that point increased until in 1925
had reached 23 tons. From Montgomery, the actual
erage loading in 1923 under a 15-ton minimum was shown
be 25.6 tons, while two years later, under a minimum
20 tons, the actual average loading was 29 tons. Coun-
's argument seems to be that with the uniform adoption
a 20-ton minimum throughout the southeast an increase
the gross revenues will undoubtedly result. It is not
ar just why or how this result would necessarily follow.

Unquestionably, the minimum weight would affect the per car earnings, but on an assumed yearly consumption of fertilizer the aggregate revenue on the total tonnage would not, it seems, be much different whether the minimum was 15 tons or 20 tons. It would only mean that fewer cars would be employed in the transportation, and that as a result a considerable saving in operating costs would be effected, and a consequent increase in the net revenue; but whether the actual gross income would be increased is doubtful.

Counsel for the Alabama commission further point to the showing made by the Norfolk Southern with respect to the loss of revenue by that carrier under the shippers' proposed scale. It was shown that this would amount to $73,913 based on the test period tonnage, or approximately $147,000 on a year's business. This carrier, it will be recalled, is asking for special treatment, proposing single-line rates over its line made 10 per cent higher than the Royster Scale, and observing the same differences between single and joint-line rates as at present obtain in the Royster Scale. It is stated that 61 per cent of the total tonnage delivered by the Norfolk Southern during the test period represented intrastate shipments in North Carolina, [fol. 983] where rates somewhat higher than the Royster Scale obtain, and this seems to cover by far the bulk of the movement under such higher rate basis. The Alabama commission does not oppose a higher basis for this carrier, and, on the assumption that preferential treatment in some degree will be accorded it, concludes accordingly that this reduction in revenue will not take place, or at least will be but nominal, thus substantially diminishing the gross estimated reduction under the shippers' scale. It of course naturally follows that any basis higher than that proposed by the shippers would result in a lesser loss than that shown.

It seems that the factor which may affect the estimated loss under the shippers' scale more than any other one element is, perhaps, the treatment that may be accorded traffic moving over short lines, and over trunk and short lines jointly. In estimating the loss under the shippers' scale, it is understood that the carriers applied to their traffic-test tonnage the short line basis proposed by the

shippers, which would result in lower revenue on all single-line shipments up to 150 miles, and on all joint trunk-and-short-line shipments up to 480 miles, than would accrue under the shippers' trunk-line scales plus a short-line arbitrary of 50 cents a ton. For example, it is shown that for the block of 120 miles and over 110, 34,000 tons of fertilizer moved in joint-line service in connection with short lines. Using the shippers' trunk-line scale for 120 miles, plus a short-line arbitrary of 50 cents, results in a rate 25 cents a ton higher than the shippers' proposed joint scale for trunk and short lines. This would produce additional revenue over that estimated of approximately $8,500 for this one mileage block alone.

It is the position of the shippers, however, if their attitude is correctly understood, that controlling weight should not be given to the maintenance of the present fertilizer revenue. In fact, counsel for the Alabama commission state on brief:

> We cannot believe that the Commission would be content in this case to arrive at a common level of rates on fertilizer in this territory by the adoption of the equalization-of-revenue theory. This might be the line of least resistance, but it would accomplish nothing in a constructive way. It would assume that the transportation burden which fertilizer is now forced to carry in the aggregate is right and proper for the future, notwithstanding the fact that it has been subjected to the same general advances in rates as were made in the higher grade articles of freight since June 25, 1918, and notwithstanding the patent fact that no effort has heretofore been made by the carriers or the Commission to arrive at a proper uniform level of rates on this commodity to apply throughout this large territory which is chiefly an agricultural area. In short, if this case is decided upon that theory, all of the inherent defects in the present system of rates will remain.

The shippers point out that the carriers have selected the highest scale maintained over any considerable territory in the southeast, and they contend that the relatively high level of rates in this Carolina territory can readily be traced to the influence exerted thereon by the northern rate structure. Excluding Carolina territory, they urge

that the scale proposed by them fairly represents the average in effect throughout the balance of the southeast except in Mississippi where a somewhat lower basis obtains. It is argued, in effect, that there is no more reason, if as much, for increasing the rates throughout the southeast [fol. 984] to the level of the rates maintained in the comparatively limited territory covered by the Royster Scale, than there is for reducing the rates in that territory to the average basis in effect throughout the balance of the southeast. In this connection it should be said that one of the North Carolina commissioners appeared at the hearing, and stated that the commission of that State now considered the Royster Scale not only too high for application in North Carolina, but too high as well for general application in the southeast. He said, to quote his own words:

It seems to us apparent that the level of rates on fertilizer between points in North Carolina adopted in 1914, and which became the basis for the scale of rates known as the Royster scale, is a higher scale of rates than should be continued between points in North Carolina or adopted for general application, state and interstate, throughout the southeast.

He further stated that it was "the purpose of the North Carolina Corporation Commission to revise the schedule of rates on fertilizer between points in North Carolina before the season for another general movement of fertilizer and as soon as this may be done without creating discrimination against interstate shippers." And the shippers call attention to the following statement made by the commission at page 623 of its decision in Southern Class Rate Investigation, supra, where it was recognized that in any general rate revision, the commodity rates in the Carolinas would undoubtedly be subject to some reduction:

A further argument advanced in favor of a concession in rates, in North Carolina at least, is the fact already mentioned that class rates in Carolina territory are now and for a long time have been relatively low compared with similar rates in other parts of southern territory.

It is true that if class rates are placed upon a uniform basis in southern territory which will preserve existing revenues in the aggregate, North Carolina will lose where certain other States will gain. On the other hand, the evidence indicates that if a similar process is followed, as is probable, in the revisions of commodity rates in southern territory which are in contemplation, the results will be reversed.

From the comprehensive record in this proceeding, it is clear that fertilizer, probably more than any other one factor, determines the success or failure of agriculture in the south. Whatever can be done, therefore, to encourage its increased use should be done, not alone because of the benefit that will accure directly to the farmer, but equally because of the direct and indirect tonnage that will accrue to the carriers. It is a commodity that gives raise to few claims of damage, and for the most part its present value is well within $1,000 per car. Whether or nor the farmer will receive the precise amount in dollars and cents of any reduction that may be made in the freight rates is not necessarily of prime importance. As heretofore said, it is an item of expense to the manufacturer and must necessarily be reflected to some extent at least in the ultimate price of the commodity. With the question of profits accruing to the fertilizer manufacturers, we are not directly concerned. They are, of course, entitled to reasonable returns on their business enterprise, and anything bordering on exorbitant profits can, it seems likely, be controlled through channels in the hands of the farmers themselves. While fertilizer and fertilizer materials should be rated well down in the transportation scale, this does not mean, [fol. 985] however, that the carriers should be required to carry the traffic at anything less than reasonable rates when all the elements involved are taken into consideration. Witness for the Alabama commission conceded that the rates on fertilizer should be somewhat higher than those on sand and gravel, slag, crushed stone, coal, and commodities of that class.

In prescribing rates from Blackshear, Ga., to northern Florida points, this commission followed the Memphis-Southwestern scale up to 240 miles, and it will probably

be admitted by the carriers that the transportation conditions in the south are, on the whole, somewhat more favorable than from Blackshear into Florida. The Memphis Southwestern rate for 100 miles is $2.30, yielding, on the minimum of 15 tons prescribed in that case, $34.50 per car, and 34.5 cents per car mile. This minimum revenue is not far from right. A rate of $2.10 for this distance, based on a 20-ton minimum, would yield $42 per car and 42 cents a car mile, higher, even, than the carriers' proposed rate on a 15-ton minimum. This, it is believed, is a reasonable starting point in fixing a just scale for general application in this territory. By referring to Appendix D, it will be observed that the rate of progression in the Memphis-Southwestern scale is not uniform for each mileage block. Beyond the shorter distances, the rates increase generally 10 cents for each 5 miles up to 140 miles, but there are several instances where there is no progression. For example, the rate for 50 miles is the same as for 45, the rate for 65 miles is the same as for 60, etc. These inconsistencies occur throughout the scale. The shippers' proposed scale shows a uniform progression of 10 cents for each 5-mile block up to and including 25 miles, with a progression of 5 cents for each 5-mile block beyond that distance to and including 100 miles. Beyond 100 miles, the scale is in 10-mile blocks up to 260 miles, with 10 cents added for each block. Beyond 260 miles, the scale is in 20-mile blocks up to 500 miles, and in 25-mile blocks beyond, with the same gradation in each case, 10 cents. The gradation proposed by the shippers seems to be, on the whole, well considered.

The joint-line rates in the Memphis-Southwestern case were made uniformly 20 cents higher than the single-line scale for all distances up to and including 500 miles. The shippers propose to begin their joint-line scale 30 cents higher than their single-line rates, and reduce the differential as the distance increases, reaching 10 cents at 350 miles and disappearing at 500 miles. The Royster Scale when adopted, provided a differential of 20 cents per ton for joint-line hauls up to and including 600 miles, the limit of the scale. This has now become generally 33 or 34 cents by reason of the general rate changes, but it is not in all cases uniform. The joint-line rates proposed

by the carriers are on this basis, and the higher rates are proposed for all distances up to 1,000 miles. It is believed that the differential scheme brought forward by the shippers is a step in the right direction. It would seem logically to follow that as the haul grows longer the cost of the joint service should grow proportionately less. To compensate for the diminishing joint-line differentials, they should, perhaps, be extended somewhat beyond 500 miles.[13]

[fol. 986] The commission should find that the following rates for single and joint-line hauls will, for the future, be reasonable maximum rates for the transportation of fertilizer and fertilizer materials over so-called standard or trunk lines throughout the territory involved in this proceeding. Carriers under a common control or management shall be considered part of the controlling line.

Distance	Single-line rates	Joint-line rates
Miles	(Cents)	(Cents)
10 and under	90	120
15 and over 10	100	130
20 and over 15	110	140
25 and over 20	120	150
30 and over 25	130	160
35 and over 30	140	170
40 and over 35	150	180
45 and over 40	155	185
50 and over 45	160	190
55 and over 50	165	195
60 and over 55	170	200
65 and over 60	175	205
70 and over 65	180	210

[13]Some consideration has been given to making rates over two or more lines in the following manner: Where the haul is over two or more carriers not under common control or management, there may be added to the total actual distance 20 miles for the first interchange between such independent carriers, and 10 miles for each additional interchange, but in no case more than an aggregate of 50 miles, the applicable rates to be determined by these inflated distances.

This addition for joint-line service would be observed regardless of the length of haul. This scheme would seem to have merit in that it provides for an increasingly higher rate as the number of carriers participating in the transportation increases.

Comments on this proposal are invited in the exceptions, in case exceptions are filed or upon the argument should one be desired.

Distance	Single-line rates	Joint-line rates
Miles	(Cents)	(Cents)
75 and over 70	185	215
80 and over 75	190	220
85 and over 80	195	225
90 and over 85	200	230
95 and over 90	205	235
100 and over 95	210	240
110 and over 100	220	245
120 and over 110	230	255
130 and over 120	240	265
140 and over 130	250	275
150 and over 140	260	285
160 and over 150	270	295
170 and over 160	280	305
180 and over 170	290	315
190 and over 180	300	325
200 and over 190	310	335
210 and over 200	320	340
220 and over 210	330	350
230 and over 220	340	360
240 and over 230	350	370
250 and over 240	360	380
260 and over 250	370	390
270 and over 260	380	400
280 and over 270	390	410
300 and over 280	400	420
320 and over 300	410	425
340 and over 320	420	435
360 and over 340	430	445
380 and over 360	440	455
400 and over 380	450	465
420 and over 400	460	475
440 and over 420	470	485
460 and over 440	480	495
480 and over 460	490	500
500 and over 480	500	510
525 and over 500	515	525
550 and over 525	530	540
575 and over 550	545	555
600 and over 575	560	560
625 and over 600	570	570

[fol. 987]

Distance	Single-line rates	Joint-line rates
Miles	(Cents)	(Cents)
650 and over 625	580	580
675 and over 650	590	590
700 and over 675	600	600
725 and over 700	610	610
750 and over 725	620	620
775 and over 750	630	630
800 and over 775	640	640
850 and over 800	650	650
900 and over 850	660	660
950 and over 900	670	670
1000 and over 950	680	680

With respect to fertilizer and fertilizer materials moving over so-called short or weak lines, in both single and joint-line hauls, the commission should find, except as to the Norfolk Southern, that reasonable rates for such traffic will be those set forth above plus an arbitrary of 50 cents per ton, this arbitrary to accrue solely to the participating short or weak line. This finding includes those carriers shown as members of the American Short Line Railroad Association in Appendix E, other than those which are under common control or management with some standard trunk line carrier, and also includes the Columbus & Greenville, the Kinston Carolina and the Carolina Railroad.

As for the Norfolk Southern, the commission should find that reasonable rates for the transportation of fertilizer and fertilizer materials in connection with that carrier, in both single and joint-line hauls, will be those set forth above plus 10 per cent, but in no case to exceed 50 cents per ton, this excess over and above the standard joint-line rates to accrue solely to the Norfolk Southern.

The carriers propose to maintain rates on less-than-carload traffic, as do also the shippers, made 120 per cent of the carload rates. This is the classification basis in the southeast, and has been in effect for some time. This spread between l. c. l. and carload rates seems altogether too small when compared with the spread between less-than-carload and carload rates on other commodities. The less-than-carload fertilizer traffic in this territory is not apparently of great proportions. It was shown that the less-than-carload shipments from various manufacturers in Ala-

bama represented but 2.14 per cent of their total rail movement, and that of a total tonnage of 16,847 tons moving from Blackshear, Ga., in 1924 to destinations in Florida and Georgia, only 1,426 tons, or 8.4 per cent of the whole, comprised less-than-carload shipments. While the record is lacking in sufficient data to enable the commission to fix a definite percentage relationship it is nevertheless adequate to warrant the recommendation that the less-than-carload rates be increased to not less than 130 per cent of the carload rates.

Exceptions to the General Adjustment

An exception to the application of the straight mileage scale is proposed by the carriers in connection with fertilizer and materials from the Ohio River crossings to points in Carolina territory. Under the proposed adjustment, Louisville is to be taken as the pivotal point, applying the distance rates therefrom, with rates from Cincinnati made the same as from Louisville, and those from Cairo and Evansville made 79 cents higher than from Louisville.
[fol. 988] This differential of 79 cents represents, it is understood, the average difference in the rates, based on the Royster Scale, to represent points in the Carolinas from Louisville on the one hand, and from Cairo and Evansville, on the other.

To the Mississippi Valley territory[1] it is proposed to maintain rates from the respective crossings, Cairo to Louisville, inclusive on the strict distance scale, except in

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[1] The rate territories in the southeast were described in Southern Class Rate Investigation, at pp. 522, 523, as follows:

"* * * southern territory has been divided into certain districts which are generally recognized but not easy to define by exact limits. On the west is a wedge-shaped district, known as Mississippi Valley territory, the western boundary of which is the Mississippi River and the eastern boundary a line running from Paducah, Ky., to Mobile, Ala., and following for the most part the Mobile & Ohio Railroad. To the east of this district lies southeastern territory. Its northern limits are vague, but apparently the boundary is the Memphis division of the Southern and, strictly speaking, it does not extend into Kentucky or include any large area in Tennessee, although portions of those States are frequently treated as within the Southeast. Certainly it embraces Alabama, Georgia, northern Florida, and the extreme southern portion of Southern Carolina. It is divided into Montgomery subterritory and Atlanta subterritory by a line running from Chattanooga, Tenn., to Birmingham, Ala., thence to Columbus, Ga., and thence south to the Gulf. Carolina territory includes North Carolina, the northern part of South Carolina, and the strip of Virginia south of the line of the Norfolk & Western.

certain instances where the prohibitions of the fourth section of the act make it necessary to maintain lower rates than would otherwise obtain because of the rates fixed to such points by other and shorter routes. For example, the single-line rate from Cairo to Tupelo, Miss., under the Royster Scale would be $3.60. Certain other routes reaching Tupelo through New Albany, Miss., would maintain the same rate to the latter point, although under a strict observonce of the distance scale a higher rate would obtain at that destination. From Cincinnati, Covington, Ky., Lexington, Ky., and other points grouped therewith, it is proposed to maintain rates to the Mississippi Valley made 55 cents per ton higher than the rates in effect from Louisville. This differential is said to represent about the average difference in the rates under the Royster Scale from Louisville, on the one hand, and from Cincinnati, on the other.

To destinations in Montgomery and Atlanta sub-territories[12] it is proposed to maintain rates from Cairo and Evansville the same as from Louisville, with rates from Cincinnati and points grouped therewith made 55 cents per ton higher to points in Montgomery sub-territory, and the same as from Louisville to points in Atlanta sub-territory. In this adjustment, Louisville has been taken as the pivotal point, establishing rates therefrom in accordance with the distance scale. The distance from Cincinnati to points in Montgomery sub-territory is said to be substantially 110 miles greater than from Louisville, which results generally in rates under the Royster Scale 56 cents higher than from Louisville. The present differential is 54 cents, and the median has been used.

It is understood that the rates under this proposed adjustment from the Ohio River crossings will apply largely on fertilizer materials such as tankage, dried blood, and cyanamid, originating beyond the crossings, and that little or no mixed fertilizer tonnage will be handled thereunder. [fol. 989] Some objection was voiced by counsel for the Kentucky commission to grouping Lexington with Cincinnati, Lexington being located 100 miles south of that crossing. It was his contention that this interior point should have the benefit of its location. The only reasons advanced for this grouping were that it had been maintained for a

considerable time, and placed the shippers at those points on an equality. We are not convinced, however, that its grouping with Cincinnati is either commercially desirable or advantageous from a transportation standpoint. The commission should find that such grouping with Cincinnati with respect to traffic to both Montgomery and Atlanta subterritories should be discontinued.

There seems to be no objection to the proposal of the carriers respecting the adjustment from the Ohio River crossings, in general, and as we read the record it is not questioned by the shippers. The commission should permit the carriers to adjust their rates as proposed by them, except as to Lexington, Ky., but based on the scale of rates hereinbefore recommended.

Import Rates

There is some doubt as to whether the rates on imported fertilizer materials are involved in this proceeding. The carriers incline to the opinion that the commission's order did not embrace import traffic, and the shippers take the opposite view. The order of the commission refers only to "interstate rates," and technically construed this would probably exclude rates on foreign commerce. It is not, however, of vital importance, for the shippers themselves do not urge specific findings at this time with respect to import traffic. Both the carriers and the shippers propose a system of port equalization, brought about, in general terms, by using the domestic distance scale from the nearest port with other competing ports placed on the same basis. This equalization would only apply to points located some little distance from the seaboard, say, 200 miles from the nearest port. Within this radius, or for the shorter distances, the rates from each port would be made in accordance with the scale subject only to the prohibitions of the fourth section of the act. In such equalization the Gulf ports and the south Atlantic ports are to be considered two distinct and unrelated groups.

In connection with this import traffic, the shippers direct attention to the fact that the handling charges at the ports are no longer absorbed by the line-haul carriers, as has been the practice in the past, and they urge that this should be

taken into consideration in fixing the general level of the rates. Whatever import tonnage moves to inland points does so on comparatively long hauls, and the aggregate amount of port charges on this tonnage as compared with the total freight charges does not seem of sufficient importance to affect materially the general rate level.

It is understood that it is the shippers' thought that the carriers should be left free to propose and submit to them for their study and suggestions a comprehensive adjustment covering import traffic, and no objection was voiced by the carriers to this procedure. The commission should recommend that this initial disposition of the matter be followed.

[fol. 990] Fourth-section Relief [15]

The carriers ask for full relief from the long-and-short-haul provision of the fourth section of the act, which relief is set forth by them on brief under four classes as follows:

1. The maximum amount of relief permitted under the fourth section, as amended, which provides in substance that the Commission may grant authority to the circuitous line or route to meet the rate of the direct line or route between competitive points, provided the rates, from, to, or between, points on the circuitous route as to which the hauls are not longer than from and to the competitive point, do not exceed the latter;

2. The maximum relief under the circuity rule from the pivotal point in the Ohio River adjustment, with additional authority, based on special circumstances, to apply the pivotal point rate to other points within the groups, provided the pivotal point rate is not exceeded at intermediate points on the direct line;

3. Authority for a joint-line route to meet the rates between competitive points fixed by the single line route without observing the competitive rate as maximum at intermediate points, provided that the rates to intermediate

[15] Various fourth section applications of the southern carriers, as set forth in Appendix F, were assigned for hearing in connection with this proceeding in so far as they covered rates on fertilizer and fertilizer materials between points in the southeast.

points on the route of the joint line do not exceed the joint line scale, and, further, do not exceed the lowest combination; and

4. Authority to apply to or from common points in connection with the short or weak lines, the competitive rates made by the standard lines without observing the same as maxima at intermediate local points on the short, or weak lines, provided the lowest combination is not exceeded.

The relief sought in the first combination is similar to that granted in Live Stock to, from, and between Points in the Southeast, 74 I. C. C. 419, but in prescribing rates relatively low because of the character of the traffic, as is proposed in this proceeding, it is not believed that unduly circuitous lines may lawfully be given the relief which they seek. For example, the Mobile & Ohio desires, among other things, to meet over its circuitous route through Artesia, Miss., the rate of the direct line of the Louisville & Nashville between Mobile, Ala., on the one hand, and Montgomery on the other, without observing such competitive rate as maximum at intermediate points. The distance from Mobile to Montgomery over the Louisville & Nashville is 178 miles, while over the route of the Mobile & Ohio it is 401 miles, or 125 per cent longer. The rate under the examiners' proposed scale for the short-line distance would be $2.90, which would yield for the distance over the Mobile & Ohio but 7.2 mills per ton mile, and but 14 cents per car mile. Other similar situations could be cited. For instance, the Seaboard Air Line desires to meet the rates of the Atlantic Coast Line from Wilmington, N. C., to Mullins, S. C. The short-line distance is 81 miles, and over the Seaboard 165 miles, or 104 per cent circuitous. The rate proposed for 81 miles is $1.95, which, over the circuitous route, would yield but 11.8 mills per ton mile, and 23.6 cents per car mile. In all such situations, it seems beyond argument that if the tentative rate is reasonably compensatory for the [fol. 991] longer haul, it must necessarily be unreasonably high for the shorter haul. No other conclusion seems logical. And as the latter assumption cannot be entertained, the only alternative is that the rate would not be reasonably compensatory over the circuitous route, and therefore not permissible under the fourth section. The carriers vig-

orously oppose, however, the imposition of any limitation on the circuity of the long line. They say that such a limitation requires the specific designation of the routes over which the rates apply, and to do this is impracticable from a tariff standpoint. In Brick and Clay Products in the South, 88 I. C. C. 543, the circuity of the line given relief was fixed at 70 per cent where the distance over the direct route was 150 miles and less, and at 50 per cent where the short line was over 150 miles. That proceeding, however, stands reopened for further consideration of this particular question. While it seems that some limitation must be placed on the circuity of the indirect routes that may properly be given relief from the fourth section, it is recommended that whatever conclusion is reached in the Brick case should be followed here.

The second class of relief is similar to that asked for and considered in Brick and Clay Products in the South, supra, and which was granted in that proceeding, but subject to the same limitations as were prescribed in connection with the relief based solely on circuity. The commission should reach the same conclusion in this case.

The relief sought under the third classification is similar to that granted in Memphis-Southwestern Investigation, supra, and other cases. The authority granted joint-line routes to meet the rates of single-line carriers is not based on the ground of circuity, but upon the different circumstances and conditions in connection with joint-line hauls and the additional cost of service incident thereto. Were the limitation to be imposed that the competitive rate should not be exceeded at intermediate points no farther distant from the point of origin than is the competitive point over the direct route, the purpose of the joint-line differentials would, to a considerable extent, be defeated. The commission should grant the relief sought for the joint-line routes, subject only to the provisos that the rates from or to intermediate points shall not exceed the lowest combination, and shall not exceed the rates prescribed for the distances involved.

The fourth class of relief involves rates to points on the so-called short or weak lines, and is for the purpose of enabling those lines to meet the rates of the standard carriers

at their junction points without observing such rates as maxima at the intermediate local stations on the respective short or weak lines. The ground for this relief is not that of circuity, but of financial necessity, and there are cases where the routes which embrace the short line will constitute the direct route in point of mileage. These carriers have in practically all cases been accorded the relief which they here seek, and there seems to be no reason why it should not likewise be authorized in this proceeding. The commission should grant the relief sought, subject only to the limitation that the rates to the intermediate local short-line points shall not exceed the lowest combination, and to the further limitation that the relief routes should not be unduly circuitous.

The Intrastate Cases

We come now to a consideration of the petitioners of the carriers alleging undue prejudice against interstate shippers and localities and unjust discrimination against inter-[fol. 992] state traffic, in violation of sections 3 and 13 of the act, by reason of the intrastate rates maintained in Alabama, Georgia and South Carolina. The carriers' evidence was directed almost entirely to a comparison of the interstate rates from manufacturing points outside the respective states with the intrastate rates from plants within those states, the destinations selected being generally located on lines operating between such manufacuring points.

Alabama

Taking up first the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within the State of Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment. In conjunction with the present rates are set forth also the rates under the Royster Scale and under the examiner's tentative scale for the distances shown:

From	To	Distance (miles)	Present rates (cents)	Royster scale (cents)	Tentative scale (cents)
Tupelo, Miss.	Glen Allen, Ala.	72	230	214	185
Birmingham	"	75	170	214	185
Chattanooga, Tenn.	Larkinsville, Ala.	62	210	203	175
Decatur, Ala.	"	60	155	203	170
Nashville, Tenn.	Elkmont, Ala.	98	259	259	210
Birmingham	"	107	205	259	220
Columbus, Ga.	Superior, Ala.	46	203	180	160
Montgomery	"	49	145	180	160
Columbus, Ga.	Alexander City, Ala.	75	237	214	185
Birmingham	"	82	180	237	195
Rome, Ga.	Anniston, Ala.	63	216	203	175
Birmingham	"	63	160	203	175
Atlanta, Ga.	Heflin, Ala.	85	259	237	195
Birmingham	"	82	180	237	195

In the foregoing table, destinations have been selected approximately equidistant from the origins used, but for all distances the intra- and interstate rates bear the same relative relationship. Manufacturing plants are located at all the originating points shown, and the transportation conditions in Alabama are said to be no different than those on the interstate hauls.

The Alabama commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing Ohio State Rates on Sand, Gravel, Stone and Paving Blocks, 85 I. C. C. 66, and that before an intrastate rate may be condemned it must be found to work undue prejudice against persons in interstate commerce or constitute an unjust discrimination against interstate commerce as a whole, citing Wisconsin R. R. Commission v. C., B. & Q. R. R. Co., 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the [fol. 993] Alabama rates is 5 tons higher than under the interstate rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but taking the lines individually it appears that the rates of the Illinois Central are in most cases higher than the Alabama scale for all distances of 220 miles and over; that the rates of the Louisville & Nashville are higher than the Alabama scale for all distances up to and including 160 miles, except for the block of 10 miles and over 5; and that the rates of the Mobile & Ohio are higher than the Alabama scale for all distances, except for three blocks, up to and including 110 miles.

While an exact parity between intra- and interstate rates may not in all cases be required under the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon anything less than reasonable must bring about, in some degree at least, the unjust discrimination against interstate commerce declared by the act to be unlawful. Furthermore, such an inequality in rates as is

here shown to exist must also work a hardship against those interstate localities and shippers which come in competition with the Alabama adjustment.

Georgia

The general history of the rates in Georgia has already been discussed. Effective November 15, 1924, the State commission promulgated a scale of rates on fertilizer which was generally lower than that then in effect. These rates were temporarily enjoined by the Federal Court for the Northern District of Georgia, and thereafter the Georgia commission rescinded its order. The present rates, therefore, are those which have been in effect in that State since 1897, as revised under the general rate changes. The showing with respect to interstate rates into Georgia over single-line routes is similar to, though in all cases not so marked as, the Alabama situation. The following examples illustrate the existing adjustment:

From	To	Distance (miles)	Present rates (cents)	Royster scale (cents)	Tentative scale (cents)
Montgomery, Ala.	Nesbit, Ga.	172	372	327	290
Savannah, Ga.	"	168	293	315	280
Montgomery, Ala.	Pine Park, Ga.	204	338	349	320
Savannah, Ga.	"	208	315	349	320
Dothan, Ala.	Naylor, Ga.	148	327	293	260
Savannah, Ga.	"	144	282	293	260
Chattanooga, Tenn.	Bowdon Junction, Ga.	131	270	282	250
Macon, Ga.	"	128	259	270	240
Chattanooga, Tenn.	Hamby, Ga.	39	169	169	150
Rome, Ga.	"	39	135	169	150
Jacksonville, Fla.	Thalmann, Ga.	73	237	214	185
Savannah, Ga.	"	70	169	214	180

[fol. 994] The record does not include a similar comparison of joint-line interstate rates with the current joint-line rates in Georgia. The commission of that State contends that, in using single-line rates, the true situation is not presented; that joint rates in Georgia are made on the full combination basis, and it points to the showing of record that the carriers' proposed joint-line rates are not in a single instance, save one, higher than the joint rates in Georgia, but, on the contrary, are in most cases considerably lower. The Georgia commission further urges that the present basis of rates has been in effect for many years, and this is the first time that discrimination against interstate commerce has been alleged. Furthermore, that not a single interstate shipper testified in this proceeding that he was at a disadvantage because of the Georgia rates. It was testified by a representative of the Central of Georgia that the bulk of its fertilizer traffic in Georgia moved on single-line rates, and this carrier is said to be an important line in that State with a substantial fertilizer tonnage.

It is certain that on this record the joint rates in Georgia cannot be condemned. They are not shown to operate to the prejudice of interstate shippers, nor that they place a burden on interstate commerce. And, after the adoption of the tentative or a similar scale for application on interstate traffic, neither is it believed that the single-line rates in Georgia will, on the whole, result in unjust discrimination against interstate or foreign commerce, or unduly prejudice interstate localities and shippers, in violation of sections 3 and 13 of the act. The Georgia commission, however, is not adverse to uniformity between their rates and interstate rates,—it is the level to be adopted as the measure of reasonableness which concerns them. On brief, it is said:

The Georgia Commission is not opposed to a system of uniform rates on fertilizer for general application in southeastern territory, to be applied both to inter- and intrastate traffic, but we feel that such rates should be reasonable and just, both to carrier and shipper.

South Carolina

The Railroad Commission of South Carolina entered no appearance, and took no part in this proceeding. The intrastate rates attacked by the carriers in Docket No. 16335 are those prescribed by that commission in its order of February 11, 1924, and which rates became effective March 15 of that year. The rates then required to be published were 12 per cent lower than the rates theretofore in effect, and which had been maintained since 1909, as revised by the general rate changes. Again on January 30, 1925, the South Carolina commission ordered a still further reduction in the carload rates on fertilizer and materials, but this order was temporarily enjoined by the Federal Court for the Eastern District of South Carolina, and the proceeding was still pending when the final hearing was held in the instant case.

Joint rates in South Carolina are made 20 per cent less than the full combination.

The alleged disparity between the intrastate and interstate rates is illustrated by the following examples:

[fol. 995]

From	To	Distance, miles	Present Rates, cents	Royster Scale, cents	Tentative Scale, cents
Charlotte, N. C.	Cornwell, S. C.	52	237	192	165
Columbia, S. C.	Cornwell, S. C.	55	179	192	165
Wadesboro, N. C.	Middendorf, S. C.	64	237	203	175
Columbia, S. C.	Middendorf, S. C.	68	188	214	180
Wadesboro, N. C.	Scranton, S. C.	85	237	237	195
Charleston, S. C.	Scranton, S. C.	82	209	237	195
Wilmington, S. C.	Winona, S. C.	101	259	259	220
Charleston, S. C.	Winona, S. C.	112	248	270	230
Augusta, Ga.	Yenome, S. C.	61	203	203	175
Columbia, S. C.	Yenome, S. C.	68	188	214	180
Augusta, Ga.	Springfield, S. C.	58	203	203	170
Columbia, S. C.	Springfield, S. C.	43	158	180	155
Augusta, Ga.	Hagwood, S. C.	130	304	270	240
Charleston, S. C.	Hagwood, S. C.	130	268	270	240
Savannah, Ga.	Springfield, S. C.	109	270	259	220
Charleston, S. C.	Springfield, S. C.	101	238	259	220
Savannah, Ga.	Pelion, S. C.	129	304	270	240
Charleston, S. C.	Pelion, S. C.	121	258	270	240
Savannah, Ga.	Ward, S. C.	156	338	315	270
Charleston, S. C.	Ward, S. C.	150	288	293	260
Savannah, Ga.	Westminster, S. C.	324	473	439	410
Charleston, S. C.	Westminster, S. C.	301	337	428	400
Atlanta, Ga.	Kings Creek, S. C.	220	383	349	330
Augusta, Ga.	Kings Creek, S. C.	199	372	338	310
Charleston, S. C.	Kings Creek, S. C.	240	337	372	350

Many other comparisons were made, including interstate rates into South Carolina with the South Carolina distance scale. This further showing is similar to the foregoing, and need not be detailed here. For convenient determination of the relationship between the present intrastate rates and the examiner's tentative scale, the following comparison is made. Appended thereto are also the South Carolina rates which stand temporarily enjoined.

[fol. 996]

Distance miles	Present rates in South Carolina	Examiner's tentative scale (a)	South Carolina rates temporarily enjoined (a)
5	90		80
10	90	90	86
15	109	100	98
20	119	110	114
25	129	120	123
35	139	140	133
45	158	155	151
50	169	160	161
60	179	170	171
70	188	180	179
75	198	185	179
85	209	195	189
90	218	200	199
100	228	210	208
110	238	220	217
115	248	230	217
125	258	240	227
130	268	240	236
135	277	250	236
140	277	250	247
145	288	260	247
150	288	260	255
160	297	270	264
180	307	290	283
190	317	300	292
210	327	320	302
300	337	390	321
320		410	331

(a) The mileage blocks under this scale do not in all cases correspond with those shown.

The Southern States Phosphate & Fertilizer Company, with factories at Savannah and Augusta, showed the disadvantage it has been under since March 15, 1924, in marketing its products at South Carolina destinations. Savannah and Augusta meet their principal competition from Charleston and Columbia, respectively. The average difference in rates in favor of Charleston is said to be around 40 cents per ton, and about 23 cents per ton in favor of Columbia. This company claims reparation based solely on the foregoing showing of disparity, but its only allegation is that of undue prejudice, and under this violation of the law a mere difference in rates does not alone necessarily measure the amount, or prove the fact, of a shipper's damage.

Penna. R. R. Co. v. International Coal Co. 230 U. S. 184; Kerr & Co. v. S. S. Ry. Co., 62 I. C. C. 296.

[fol. 997] During the first six months of 1923, there were shipped 1,530 cars of fertilizer and fertilizer materials from interstate points to destinations on the Southern in South Carolina, while during the same period 3,816 cars moved in intrastate commerce in that State to Southern Railway destinations, showing the preponderance of intrastate traffic.

Unquestionably the present rates in South Carolina unduly prejudice interstate localities and shippers, and unduly prefer shippers located at South Carolina points. Furthermore, the reduced intrastate rates prescribed by the South Carolina commission in its order of January 30, 1925, if permitted to become effective, would result, it is believed, in unjust discrimination against interstate commerce, and in undue prejudice to interstate localities and shippers. As compared with the examiner's tentative scale, however, the present rates in South Carolina would not, on the whole, result in such unjust discrimination or undue prejudice.

With respect to these intrastate cases, the Commission should find—

1. That the maintenance of intrastate rates in Alabama lower than the corresponding rates herein found reasonable for the interstate transportation of fertilizer and fertilizer materials will result in unjust discrimination against interstate commerce, and in undue prejudice to interstate shippers and localities.

2. That, in view of the rates herein proposed as reasonable, the maintenance of the present intrastate rates in Georgia will not for the future result, on the whole, in undue prejudice to interstate shippers or localities, nor in unjust discrimination against interstate commerce. Such few rates as are not on a parity with the rates herein found reasonable should be revised in harmony therewith, and it is not doubted that the Georgia Commission will willingly take such action as may be necessary without the entry of an order in the premises.

3. That, in view of the rates herein proposed as reasonable, the maintenance of the present intrastate rates in South Carolina will not for the future result, on the whole, in undue prejudice to interstate shippers and localities, nor in unjust discrimination against interstate commerce. Here, too, there may be a few instances where the intrastate rates are lower than the scale proposed herein, but it is believed that the South Carolina commission will have no hesitation in authorizing the carriers to bring such individual rates up to the proper level.

No orders should be entered in these State cases, Docket Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates in harmony with the interstate adjustment.

Cottonseed Meal

The cottonseed meal interests state that this commodity has been included in the list of fertilizer materials since 1889, and they now seek a finding by this Commission that it should be so continued without reservation. The carriers are willing to continue that rating for the present, but they strongly object to that classification being fastened upon them for all time to come. While in the southeast the [fol. 998] predominant use of cottonseed meal is that of fertilization, in the southwest and in official territory it is used almost entirely for feeding purposes, and it is the carriers' thought that as time goes on it may be used more and more for the latter purpose also in the southeast until some day the classification should more appropriately be that of feed than of fertilizer material.

In the season of 1923-24 over 600,000 tons of cottonseed meal were produced in the southeast, and the meal interests roughly estimate that about 73 per cent of this tonnage was used as a fertilizer or fertilizer material. Its fertilizing characteristics are especially desirable in tobacco growing, although it is also used to quite an extent on cotton and other crops, principally in combination with other materials. The price of cottonseed meal was said to have been about $35 a ton when the crushing season opened in 1925.

The position of the meal interests with respect to the finding desired by them is not clearly understood. Surely it cannot be their thought that the Commission can reach a conclusion at this time which will be beyond reconsideration in the future. The Commission has never felt bound by the doctrine of res adjudicata, and it should not be invoked in this instance.

Cottonseed meal should at the present time be classified as a fertilizer material in the southeast, and it is recommended that the Commission should so find, but beyond this the Commission should not go, nor, indeed, can it go.

Cyanamid

Cyanamid is manufactured by the American Cyanamid Company, a Maine corporation at Niagara Falls, Ontario, the only point of production in North America. As already stated, it is a product obtained by combining the nitrogen of the air with lime and coke, and in its marketable state is a grayish powder containing about 26 per cent ammonia. It is said to be the cheapest form of organic ammonia available. Besides its value as an ammoniate, it is claimed to be a fine conditioner of fertilizer mixtures, making the latter dry and friable, and easy to apply to the soil. Owing to its high lime content, however, only about 60 pounds can be used normally in a ton of commercial fertilizer. For the first six months of 1925 it was stated that the price of cyanamid, f. o. b. origin, was $1.68 per unit of ammonia, which it is understood figures $43.68 per ton of cyanamid. It is shipped in burlap bags containing 200 pounds each, the average car loading is around 50,000 pounds, and no loss or damage claims have ever been filed. The production of cyanamid has been steadily increasing, over 62,000

tons having been shipped from Niagara Falls during the year ended March 31, 1925. 56 per cent of this tonnage went into the southeast. During the same period, over 14,000 tons were imported from European countries, most of which was used in the southern States.

No joint rates are in effect to the southeast, and this company seeks proportional rates from the Ohio River Crossings and Virginia Cities made 62 per cent of whatever distance scale may be adopted for general application. It shows that at the present time it has commodity rates to many points in official territory which approximate 70 per cent of the sixth-class rates, the rating accorded fertilizer and materials in that territory, and that to the Virginia Cities it has a proportional rate, applicable on traffic destined to the southeast, of $5.40 a ton, which is 62.7 per cent of the sixth-class rate. This latter affords the basis for the rates sought.

[fol. 999] To points in South Carolina, the average through charge is shown to be a little over $10 a ton, with a weighted average rate of $8.99. To Alabama, the weighted average rate is $9.37, and the average through charge $9.66. The adoption of the tentative scale recommended herein would not materially affect the through charges.

It was shown that shipments made to destinations in Alabama, Georgia, North Carolina, South Carolina, and Florida during the year ending March 31, 1925, moved a weighted average distance of 414 miles beyond the Virginia Cities, at a weighted average rate of $4.54, and it is strongly urged that as the average haul of cyanamid in southern territory is approximately four times greater than that of fertilizer, it is entiled to rates on a considerably lower basis than the correspondingly local rates from these gateways.

In Southern Class Rate Investigation, supra, joint rates, with certain exceptions, were prescribed as reasonable from points in official territory to destinations in the south substantially lower than the combination basis over the Ohio River or the Virginia Cities, thus in effect condemning combination rates between these territories on class traffic. The cyanamid interests urge that the principle there recognized applies with even greater force to com-

modity rates. Where the hauls are over well-established routes embracing no unusual difficulties at the interchange points, it is unreasonable to maintain through rates based on local factors, unless it is clearly shown that one or more of such factors are on a relatively low level. A representative of the Louisville & Nashville admitted that it might be desirable at some time in the future to establish proportional rates from the Ohio River; and, in lieu of joint rates, it is believed that rates somewhat lower than the locals from the gateways are not only desirable but proper.

The short-line distances from Niagara Falls to Norfolk is about 600 miles, which, added to the weighted average haul above shown, 414 miles, makes a total carriage of 1014 miles for which the average through rate is around $10. For a haul of 1000 miles in southern territory, a rate of $6.80 is herein proposed.

62 per cent of the tentative joint-line rate of $4.75 for 414 miles is $2.95, yielding a ton-mile revenue of 7.1 mills, and a car-mile revenue, based on the average loading of 25 tons, of 18 cents. We are not convinced that so great a different between the proportional and local rates should here be required as is sought by the cyanamid interests. The record contains nothing with respect to whether or not the rates north of the gateways are on a proper basis.

It is recommended that the Commission find that reasonable maximum proportional rates for the transportation of cyanamid from the Ohio River Crossings and from the Virginia Cities, applicable on traffic originating beyond those gateways, will be rates made 80 per cent of the distance scale herein prescribed. Whether or not these proportional rates should be limited to apply only on cyanamid is not now passed upon, but there would seem to — no good reason why they should be so limited.

[fol. 1000] Summary of Proposed Findings

1. Fertilizer and fertilizer materials found to be entitled to relatively low rates because of their importance to agriculture, and because of the direct and indirect tonnage accruing to the carriers through their use.

2. Reasonable single and joint line rates on fertilizer and fertilizer materials prescribed for application between

all points in the southeast, as described in Appendix A. Certain groupings authorized from the Ohio River.

3. An arbitrary of 50 cents a ton prescribed when the transportation is in connection with so-called short or weak lines, such arbitrary to accrue to these carriers. Rates in connection with the Norfolk Southern made 10 per cent higher than the distance scale, but in no case to exceed 50 cents a ton, this excess to accrue to the Norfolk Southern.

4. Fourth Section relief granted, subject to such limitations as may be imposed in Brick and Clay Products in the South, supra,

5. The intrastate rates in Alabama found to unjustly discriminate against interstate commerce, and to unduly prejudice interstate shippers and localities.

6. The intrastate rates in Georgia and South Carolina found not to be unlawful for the future, except in isolated cases.

7. Proportional rates prescribed from the Ohio River Crossings and Virginia Cities, applicable on cyanamid originating beyond those gateways.

[fol. 1000½] Appendix A

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 7th Day of October, A. D. 1924

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Order

It appearing, That in many instances interstate rates on fertilizers, fertilizing compounds, and fertilizer materials between points in southern classification territory differ materially for substantially similar hauls and that many of

said rates are higher for shorter distances than for longer distances over the same line or route:

And it appearing, from numerous formal and informal complaints to this commission that said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials are in general unsatisfactory to shippers thereunder, that a general revision thereof has been proposed by the carriers serving said territory, and that petitions have been filed by carriers operating in the states of South Carolina and Alabama, alleging that the rates on fertilizers and fertilizer materials in effect within those states cause undue and unreasonable advantage, preference and prejudice as between persons and localities in interstate commerce on the one hand and intrastate commerce on the other;

It is ordered, That a proceeding of investigation and inquiry *That a proceeding of investigation and inquiry* be, and it is hereby instituted by this commission on its own motion into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, applicable between points in the territory described in the next following paragraph, with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

It is further ordered, That said proceeding of investigation and inquiry shall include said rates and charges applicable in interstate commerce between points in the following territory:

1. Between points in the states of Kentucky (except local points on the Chesapeake & Ohio Railway), Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, and Louisiana east of the Mississippi River; also between points on the north bank of the Ohio River, Cairo, Ill., to Cincinnati, Ohio, inclusive, and Helena, Ark., on the one hand, and points in the above-named states on the other.

2. Between points in the state of Virginia on the one hand and points in the states of Kentucky (except local points on the Chesapeake & Ohio Railway and south bank Ohio River crossings), Tennessee, Mississippi, Alabama,

Georgia, Florida, South Carolina, North Carolina, and Louisiana east of the Mississippi River on the other.

It is further ordered, That the common carriers named in the appendix (a) hereto be, and they are hereby, made respondents to the proceeding.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1001] Appendix B

Docket No. 16295

Joint resolution directing the Interstate Commerce Commission to take action relative to adjustments in the rate structure of common carriers subject to the Interstate Commerce Act, and the fixing of rates and charges.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates

(a) Omitted because of length.

and charges as may be found necessary to correct any defects so found to exist. In making any such changes, adjustment, or redistribution the commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the commission.

In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: Provided, That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution.

Approved, January 30, 1925.

[fol. 1002] Appendix C

Docket No. 16295

List of Fertilizer Materials on Which Carriers' Proposed Rates Will Apply

Carload

Ammonia, sulphate of, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Ashes:

Bagasse, cactus, cotton boll, burr or seed hull, manure, sage brush or wood, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Kelp, in bags, C. L., minimum weight 30,000 pounds.

Rice hull, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Beet slops (beet sugar final molasses residuum), in tank cars, C. L., subject to Rule 35 of Southern Classification.

Blood, dried, in bulk, in bags or barrels, or in bulk, C. L., minimum weight 40,000 pounds.

Bone, charred, filtering (animal charcoal), spent, in bags, C. L., minimum weight 36,000 pounds.

Bones, other than human or fresh meat bones:

Ground, in bags or barrels, C. L., minimum weight 30,000 pounds.

Not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Castor bean hulls or stems, ground or not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Castor pomace, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Cement flue dust, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Cocoa beans shells, ground, in bulk in bags, C. L., minimum weight 40,000 pounds.

Cottonseed cake or meal, loose or in bags, C. L., minimum weight 40,000 pounds.

Cottonseed hulls, not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Cottonseed hulls, ground (cottonseed hull bran), in bags, C. L., minimum weight 30,000 pounds.

Cyanamid, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Distillory molasses fertilizer residuum (dry or liquid residuum from molasses distillation):

Liquid, in tank cars, C. L., subject to Rule 35 of Southern Classification.

Dry, in bags, barrels or boxes, C. L., minimum weight 36,000 pounds.

Fertilizer blacks (refuse black material for coloring fertilizers), in bulk in bags or barrels, C. L., minimum weight 36,000 pounds.

Fertilizer wool refuse, in machine pressed bales, C. L., minimum weight 30,000 pounds, subject to Rule 34.

Fertilizer compounds (manufactured fertilizers), N. O. I. B. N., dry, in bulk in cloth or paper bags, or in bulk in barrels or boxes, C. L., minimum weight 30,000 pounds.

Fish scrap, dry, not ground nor pulverized, or acid fish scrap, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Grape pomace:

Dry, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Other than dry, in packages or in bulk, C. L., minimum weight 36,000 pounds.

[fol. 1003] Iron or steel flue dust, in packages or in bulk, C. L., minimum weight 50,000 pounds.

Lime nitrogen:

In iron or steel barrels, C. L., minimum weight 40,000 pounds.

In tank cars, C. L., subject to Rule 35 of Southern Classification.

Lime (calcium), nitrate of, in double bags or in bulk in barrels, C. L., minimum weight 40,000 pounds.

Meal:

Hoof or Horn, in bags or in bulk, C. L., minimum weight 30,000 pounds.

Kapok seed, in bags or in bulk, C. L., minimum weight 60,000 pounds.

Rape seed, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Senna bean, in bags, C. L., minimum weight 40,000 pounds.

Mussel meat, not edible, dry, in bags or barrels, C. L., minimum weight 30,000 pounds.

Peanut oil cake or oil cake meal, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Peat:

Ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Not ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Phosphate, basic, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Phosphate Rock:

Ground or pulverized:

Acidulated (acid phosphate), in packages or in bulk, C. L., minimum weight 40,000 pounds.

Acidulated and ammoniated, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Potassium (potash):

Alkali salts, crude, dry, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Beet or cane residuum, in bags, C. L., minimum weight 40,000 pounds.

Carbonate of, crude, in bulk in barrels, C. L., minimum weight 40,000 pounds.

Hartsalz, Kainit, Manure salts, double manure salts or sylvanit, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Muriate of (chloride of potassium), in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

Sulphate of, in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

Tobacco crystals (tobacco potash salts), in bags or barrels, C. L., minimum weight 40,000 pounds.

Sea grass, sea moss or sea weed:

Kelp, dried or ground, in bags, C. L., minimum weight 30,000 pounds.

Sesame oil cake or oil cake meal, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Shells, clam, mussel or oyster:

Crushed or ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Not crushed nor ground, in packages or in bulk, C. L., minimum weight 40,000 pounds.

[fol. 1004] Sodium (soda):

Nitrate of (Chili saltpetre), in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

Nitre cake (crude bi-sulphate of soda), in packages or in bulk, C. L., minimum weight 40,000 pounds.

Soil compounds, containing two or more of the following ingredients:

Potash
Phosphates,
Sulphates,
Limes,
Silicates,
Magnesia,
Carbonates,
Iron oxides,
Chlorides,
Manganese,

Carload minimum weight 30,000 pounds.

Soy (soja or soya) bean oil cake or oil cake meal, loose or in bags, C. L., minimum weight 40,000 pounds.

Sugar cake mud (refuse from sugar filter presses), in bags, C. L., minimum weight 40,000 pounds.

Sulphur (brimstone), in bulk in bags or in bulk, C. L., minimum weight 40,000 pounds.

Tankage:

Garbage, dry, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Tankage, NOIBN, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Tobacco, unmanufactured, stems, ground, in bags, C. L., minimum weight 40,000 pounds.

Tobacco dust, refuse, sand or waste, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Less Carload

Ashes:
- Bagasse, cactus, cotton boll, burr or seed hull, manure, sage brush or wood, in bags.
- Kelp, in bags.
- Rice hull, in bags.

Bones, other than human or fresh meat bones:
- Ground, in bags or barrels.
- Not ground in bags or barrels, or in barrels with cloth tops.

Castor bean hulls or stems, ground or not ground, in bags or barrels.

Cottonseed cake or meal, in bags.

Cottonseed hulls:
- Not ground, in bags or barrels, or in machine pressed bales.
- Ground (cottonseed hull bran), in bags.

Cyanamid, in bags or barrels.

Fertilizing compounds (manufactured fertilizers), N. O. I. B. N., dry in bulk in bags, barrels or boxes.

Lime (calcium), nitrate of, in double bags or in bulk in barrels.

Mussel meat, not edible, dry, in bags or barrels.

Peanut oil cake or oil cake meal, in bags.

Phosphate, basic, in bags.

Phosphate rock:
- Ground or pulverized:
  - Acidulated (acid phosphate), in bags or barrels.
  - Acidulated and ammoniated, in bags or barrels.

[fol. 1005] Potassium (potash):
- Alkali salts, crude, dry, in bulk in bags, barrels or boxes.
- Hartsalz, kainit, manure salts, double manure salts or sylvanit, in bags, barrels or boxes.
- Muriate of (chloride of potassium) in bags or in bulk in barrels or boxes.
- Sulphate of, in bags or in bulk in barrels or boxes.
- Tobacco crystals (tobacco potash salts), in bags or barrels.

Sea grass, sea moss or sea weed:
- Kelp, dried or ground, in bags.

Shells, clam, mussel or oyster:
Crushed or ground, in bulk in bags, barrels or boxes.
Not crushed nor ground, in bags, barrels or boxes.
Sodium (soda), nitrate of (Chili saltpetre), in bags, or in bulk in barrels or boxes.
Soy (soja or soya) bean oil cake or oil cake meal, in bags.
Tankage:
Garbage, dry, in bags.
Tankage, N. O. I. B. N., in bags.
Tobacco, unmanufactured, stems, ground, in bags.

[fol. 1006] Appendix D

Docket No. 16295

Memphis-Southwestern Scales

Distance (miles)	Single line (cents)	Joint line (cents)
5	100	120
10	100	120
15	110	130
20	120	140
25	130	150
30	130	150
35	140	160
40	150	170
45	160	180
50	160	180
55	170	190
60	180	200
65	180	200
70	190	210
75	190	210
80	200	220
85	210	230
90	210	230
95	220	240
100	230	250
105	230	250
110	240	260
120	250	270

Distance (miles)	Single line (cents)	Joint line (cents)
125	260	280
130	270	290
135	270	290
140	280	300
150	290	310
160	300	320
170	310	330
180	320	340
190	330	350
200	340	360
210	350	370
220	360	380
230	370	390
240	380	400
250	390	410
260	390	410
280	410	430
300	420	440
320	440	460
340	450	470
360	460	480
380	480	500
400	490	510
425	500	520
450	510	530
475	530	550
500	540	560
525	560	560
550	570	570
575	580	580
600	590	590
625	600	600
650	610	610
675	620	620
700	630	630
725	640	640
750	650	650
775	660	660
800	670	670

[fol. 1007] Appendix E

Docket No. 16295

Aberdeen & Rockfish Railroad Company.
Alabama, Florida & Gulf R. R. Company.
Andalusia Florida & Gulf Railway Company.
Atlantic & Western R. R. Company.
Atlantic & Yadkin Railway.
Bamberg, Erhardt & Walterboro Railroad Company.
Bennettsville & Cheraw Railroad Company.
Birmingham & Southeastern Railway Company.
Blue Ridge Railway.
Buffalo, Union-Carolina Railroad.
Carolina & Northwestern Railway Company.
Charlotte Harbor & Northern Railway.
Charlotte, Monroe & Columbia Railroad.
Chattahoochee Valley Railway Company.
Chesterfield and Lancaster Railroad Company.
Collins & Glennville Railroad Company.
Columbia, Newberry & Laurens Railroad Company.
Cumberland and Manchester Railroad Company.
Danville & Western Railway Company.
Dover and Southbound Railroad Company.
East Tennessee & Western N. C. R. R. Co.
East and West Coast Railway.
Elberton & Eastern Railroad Company.
Fernwood, Columbia & Gulf Railroad Company.
Flemingsburg & Northern Railroad Company.
Flint River & Northeastern Railroad Company.
Florida, Central & Gulf Railway.
Frankfort & Cincinnati Ralway Company.
Garyville Northern Railroad Company.
Georgia, Ashburn, Sylvester & Camilla Railway.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Georgia & Florida Railway.
Gainesville & Northwestern Railroad Company.
Greene County Railroad Company.
Greenville & Northern Railway Company.
Hampton & Branchville Railroad Company.
High Point, Randleman, Asheboro & So. R. R.

High Point, Thomasville & Denton R. R Co.
Kentucky & Tennessee Railway.
Lancaster & Chester Railway Company.
Laurinburg & Southern Railroad Company.
Lawndale Railway & Industrial Company.
Live Oak, Perry & Gulf Railroad Company.
Louisville & Wadley Railroad Company.
Macon, Dublin & Savannah Railroad Company.
The Marianna & Blountstown R. R. Co.
Maxton, Alma & Southbound Railroad Company.
Moore Central Railway.
Morgan & Fentress Railway Company.
Muscle Shoals, Birmingham & Pensacola Railway.
The Natchez, Columbia & Mobile R. R. Co.
The Northwestern Railroad of South Carolina.
Oneida & Western Railroad Company.
Pearl River Valley Railroad Company.
The Pickens Railroad Company.
Raleigh & Charleston Railroad Company.
Savannah & Atanta Railway.
Savannah & Statesboro Railway Company.
Shearwood Railway.
Statesboro Northern Railroad Company.
Sylvania Central Railway Company.
Tallulah Falls Railway Company.
Tampa and Gulf Coast Railroad Company.
Tampa & Jacksonville Railway Company.
[fol. 1008] Tampa Northern Railroad Company.
Tavares & Gulf Railroad.
Tennessee, Kentucky & Northern R. R. Co.
Townsville Railroad Company.
The Union Point & White Plains R. R. Co.
Wadley Southern Railway Company.
Ware Shoals Railroad Company.
Washington & Lincolnton Railroad Company.
Wellington & Powellsville R. R. Co.
Wrightsville & Tennille Railroad Company.
Yadkin Railroad Company.

[fol. 1009] Appendix F

Docket No. 16295

Fourth-section Applications Set for Hearing in Connection with This Proceeding

Filed by	Application No.
Filed by	Application No.
Filed by	Application No.
Aberdeen & Asheboro R. R. Co	4309
Aberdeen & Rockfish R. R. Co	600
Alabama & Vicksburg Ry. Co	601
Alabama Great Southern R. R. Co	542
Appalachicola Northern R. R. Co	3794
Atlanta & West Point R. R. Co	1024
Atlanta, Birmingham & Atlantic R. R. Co.	972
Atlantic & Western R. R. Co	2639
Atlantic Coast Line R. R. Co	703
Augusta Southern R. R. Co	1546
Bennettsville & Cheraw R. R. Co	224
Blue Ridge Ry. Co	1545
Bonlee & Western Ry. Co	609
Brimstone R. R. & Canal Co. (The)	4147
Brookhaven & Pearl River R. R. Co	3618, 4301
Cadiz R. R. Co	1919
Carolina & Northwestern Ry	60
Carolina, Clinchfield & Ohio Ry	1478
Carolina, Clinchfield & Ohio Ry. of S. C.	1479
Central of Georgia Ry. Co	1530
Charlotte Harbor & Northern Ry.	4149
Chattahoochee Valley Ry. Co	1576
Chattanooga Southern R. R. Co	540
Chesapeake & Ohio Ry. Co. (The)	1747, 1752, 1756
Chesterfield & Lancaster R. R	4023
Chicago, Memphis & Gulf R. R. Co.	1916
Cincinnati, Burnside & Cumberland River Ry.	3971
Cincinnati, New Orleans & Texas Pac. Ry. Co. (The)	3965
	3966
	3967
	3968

Danville & Western Ry 1544
Dover & Southbound R. R. Co 1070
Durham & Charlotte R. R 225
Durham & Southern Ry. Co 1047
East Tennessee & Western North Carolina R. R. Co 4144
Edgmoor & Manetta Ry. Co 4503
Fernwood & Gulf R. R. Co 4302, 1912
Fitzgerald, Ocilla & Broxton R. R. Co 541
Flint River & Northeastern R. R 222
Florida Central R. R. Co 115
Florida East Coast Ry 5095
Florida Ry. Co 3979
Gainesville Midland Ry 117
Georgia & Florida Ry 789
Georgia, Florida & Alabama Ry. Co 3692
Georgia Northern Ry. Co 221
Georgia R. R. 3918
Georgia Southern & Florida Ry Co 2029
Georgia Southwestern & Gulf R. R. Co 4048
Greenville & Knoxville Ry 1542
Gulf & Ship Island R. R. Co 484
Gulf Line Ry. Co 890
Harriman & Northeastern R. R. Co 3975
Hartwell Ry. 1543
Illinois Central R. R. Co 2045
Jackson R. R. Co. (The) 1915
Kentucky Midland R. R. Co 3580
Kentwood & Eastern Ry. Co 1986
Kinston & Snow Hill R. R. Co 1076
Kinston, Carolina R. R. & Lumber Co 1069
[fol. 1010] Knoxville, Sevierville & Eastern Ry. Co 1541
Lancaster & Chester Ry. Co 1540
Lawndale Ry. 3973
Lexington Terminal R. R. Co 3915
Little River R. R. Co 1538
Live Oak, Perry & Gulf R. R 107
Louisville & Nashville R. R. Co 1952
Louisville, Henderson & St. Louis Ry. Co 1065
Macon & Birmingham Ry. Co 2234
Macon, Dublin & Savannah R. R 782
Mississippi Central R. R. Co 1555
Mobile & Ohio R. R. Co 2138
Monroe R. R. Co 3916

Mount Airy & Eastern Ry. Co 1483
Nashville, Chattanooga & St. Louis Ry. (The) 458
Natchez, Columbia & Mobile R. R. Co 1918
New Orleans & Northeastern R. R 601
New Orleans Great Northern R. R. Co 4297
New Orleans, Mobile & Chicago R. R. Co. (The) 4948
New Orleans, Natalbany & Natchez Ry. Co 3930
Norfolk & Western Ry. Co 1561
Norfolk Southern R. R. Co 1074
Northampton & Hartford Ry 4502
North & South Carolina Ry. Co 4672
Northern Alabama Ry. Co 1537
Ocilla, Pinebloom & Valdosta R. R. Co 2023
Ohio & Kentucky Ry. Co 4919
Overton County R. R. and Geo. A. Clark, Rec 3933
Pickens, R. R 1536
Piedmont Ry. Co. 1535
Raleigh & Charleston R. R. Co. 3927
Raleigh & Southport Ry. Co. 1030
Roanoke River Ry. 3925
St. Louis & San Francisco Ry 799, 2346, 2353
St. Marys & Kingsland R. R. Co 4642
Sanford & Troy R. R. Co 220
Savannah & Statesboro Ry. Co 3931
Seaboard Air Line Ry 1573
Smithsonia & Dunlap R. R 4920
South Carolina Western Ry. Co 5021
South Georgia Ry. Co 62
Southern Ry. Co 1548
Southern Ry. Co. in Mississippi 2222
Tallahassee & Montgomery Ry. Co 1022
Tallulah Falls Ry 1534
Tampa & Jacksonville Ry. Co 4641
Tampa Northern R. R. Co 3548
Tennessee & North Carolina R. R. Co. 3662
Tennessee Ry. Co. 3968
Tombigbee Valley R. R. Co. 1533
Tuskegee R. R. Co 1023
Union & Glen Springs R. R. Co 3813
Union Point & White Plains R. R. Co. 3917
Union Springs & Northern Ry. Co 1476
Virginia & Southwestern Ry. Co 945
Virginian Ry. Co. (The) 927

Ware Shoals R. R. Co 2981
Western Railway of Alabama (The) 1021
Yazoo & Mississippi Valley R. R. Co. (The) 2043
A. D. Hall, Agent 1613

[fol. 1011] EXHIBIT IN EVIDENCE

Exceptions on Behalf of the Alabama Public Service Commission to Report Proposed by Examiner H. W. Archer

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[fol. 1011a] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket 16295

Rates on Fertilizer and Fertilizer Materials Between Points in Southern Territory

Docket 16336

Rates on Fertilizer and Fertilizer Materials Within the State of Alabama

Exceptions on Behalf of the Alabama Public Service Commission to Report Proposed by Examiner H. W. Archer

Hugh White, Attorney; J. H. Alldredge, Chief Examiner, for the Alabama Public Service Commission.

[fol. 1011-1] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket 16296

Rates on Fertilizer and Fertilizer Materials Between Points in Southern Territory

Docket 16336

Rates on Fertilizer and Fertilizer Materials Within the State of Alabama

Exceptions on Behalf of the Alabama Public Service Commission to Report Proposed by Examiner H. W. Archer

Prefatory Statement

In filing exceptions to the report in these proceedings, we think it only fair to say that we believe the examiner has made a very careful, painstaking and conscientious effort to do justice to all parties concerned. Although he has not upheld our views, or the views of any other party, in all particulars, at the same time we are convinced from a reading of the report that he has sought to reach just and sound conclusions. While differing with some of these conclusions we desire to commend the examiner for his constructive work in this matter. With much of it we are in hearty accord. We are sorry to have to disagree with any of his conclusions, so thoroughly convinced are we that he has tried to do what is right.

[fol. 1011-2] Exceptions

I

Exception is taken to the measure of the proposed scale insofar as it exceeds the scale proposed by the representatives of the public.

II

Exception is taken to the gradation of the proposed scale between 500 and 600 miles, inclusive.

III

Exception is taken to the basis of rates proposed in the report for short lines.

IV

Exception is taken to the proposed minimum carload weight on cottonseed hulls.

V

Exception is taken to the proposed finding with respect to intrastate rates in the state of Alabama.

Argument

Exception I: Not much more can be said in the way of argument in support of the measure of the scale proposed by the representatives of the public (the Alabama scale extended) than has already been said in the briefs filed on behalf of various shippers, shippers' organizations and the Alabama Public Service Commission. We rely upon the evidence and the arguments already submitted to justify the Alabama scale, as extended and submitted by the representatives of the public, as the proper scale for general application in southern territory.

Exception II: In the scale proposed by the examiner on Sheet 40 of the proposed report there is a "hump" between 500 and 600 miles which should be eliminated. The [fol. 1011-3] scale progresses at the rate of 10 cents per ton for each 20-mile block from 280 miles up to and including 480 miles. This gradation is at the rate of ½-cent per ton per mile. Then at 480 miles the gradation increases to 15 cents per ton for each 25-mile block up to and including 600 miles, receding at that point to 10 cents per ton for each 25-mile block. Fifteen cents per ton for each 25-mile block is equivalent to 3/5 of a cent per ton per mile, which is a heavier rate of gradation than is applied between 280 miles and 480 miles and a heavier rate of gradation than is applied beyond 600 miles. This produces an unjustifiable "hump" in the scale between the distances we have mentioned.

Exception III: The examiner proposes that the rates for short lines be made by superimposing upon the standard-line scale a flat arbitrary of 50 cents per net ton (see Sheet 41 of the proposed report.) The examiner must have overlooked the fact that it will be necessary to make three different applications of the rates over short lines as follows:

(a) For single-line transportation over short lines.

(b) For joint-haul transportation between points exclusively on short lines.

(c) For joint-haul transportation between points on standard lines and points on short lines.

If the rates for single-line transportation over short lines are to be constructed by adding 50 cents per ton to the single-line rates proposed for the standard lines, then it is clear that the scale will be thrown out of balance, because the flat arbitrary of 50 cents per ton bears a much greater ratio to the rates for short hauls than for the longer hauls. It would completely unbalance the scale and unduly burden the short hauls. The rates suggested by the representatives of the public in this proceeding for single-line hauls over [1011-4] short lines were made on a basis of 120 per cent of the single-line scale for the standard lines, and in the traffic test it was shown that these rates would increase substantially the revenue of the short lines on this traffic. We submit that the proper way to construct a scale for single-line transportation over short lines is by increasing the scale for the standard lines by a fixed percentage, and if a higher scale is adopted for the standard lines than the one proposed by the representatives of the public, then it is plain that increasing this scale 20 per cent would increase still further the revenue of the short lines on this traffic. The maximum basis for these rates should not be in excess of 120 per cent of the standard-line scale.

With respect to joint-haul traffic moving exclusively over short lines—of which there is a very small volume—the rates should be constructed by observing the same joint-haul differentials superimposed on the scale for single-line hauls as has been suggested for the standard lines.

In the case of rates for joint-haul transportation between points on standard lines and points on short lines—which are by far the most important—it would not be objectionable to use the principle suggested by the examiner instead of the one suggested by the representatives of the public. This might result in a more simple method of constructing these rates. But we submit that instead of using a flat arbitrary for all distances it should be graded according to distance, starting with a smaller arbitrary and gradually increasing it. The use of a flat arbitrary for all distances necessarily will throw out of balance any mileage scale that might be constructed. If the correct principles are observed in constructing the basis scale then those principles should not be nullified by using a flat arbitrary in

constructing rates for another class of service. The sug- [fol. 1011-5] gested basis of the examiner for constructing rates for short lines would materially increase the revenues of these carriers on this traffic in the event they are able to hold the business, which they could not possibly do against the competition which they must meet.

Exception IV: It is not exactly clear to us just what minimum carload weight has been proposed by the examiner on cottonseed hulls. If it be 20 tons, then we respectively submit that it is too high for this commodity. The evidence shows that cottonseed hulls will not load to 20 tons in an ordinary 36-foot car. The cubical capacity is not sufficient to hold this weight, and of course it would not be right to put the minimum at 20 tons in the face of the fact that an ordinary car does not possess sufficient cubical capacity to hold this amount. The situation is different with respect to the other commodities. We may be mistaken, however, in our understanding of what is proposed with respect to this commodity.

Exception V: Recommendations of the examiner with respect to the intrastate rates in the state of Alabama we think are at variance with the law and the facts. His report touches this subject somewhat uncertainly when he says, on Sheet 47, that "an exact parity between intra- and interstate rates may not in all cases be required under the law." The Commission has stated definitely that the law does not require an exact parity between intrastate and interstate rates. That is also the holding of the United States Supreme Court. Such a thing would be impracticable if it were the law. We think this Commission should be willing to say definitely what the law is.

We think also that the examiner did not give due consideration in his comparisons of the Alabama intrastate [fol. 1011-6] rates with interstate rates to the existence of numerous specific interstate rates applying to, from and across Alabama that were materially lower than the interstate mileage scales of the carriers to which he refers, which serve to reduce the general level of the going interstate rates, and the important fact that the Alabama rates carried a substantially higher minimum carload weight than

the interstate rates. This fact, of itself, is sufficient to nullify any advantage that the Alabama shipper might have in the rates in some instances over interstate shippers. Then, again, the finding which he recommends grows out of conditions surrounding the existing interstate rate structure which he condemns in another part of the report. We respectfully submit that unlawful discrimination cannot be found to exist between existing intrastate rates and some future interstate rate structure. The Alabama rates under the law cannot be condemned upon the record in these proceedings because they may not harmonize with some future revision.

The examiner must have been influenced in his recommendation that the Alabama intrastate rates constitute unjust discrimination against interstate commerce by the thought that "When there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon anything less than reasonable must bring about, in some degree at least, the unjust discrimination against interstate commerce declared by the act to be unlawful." (Sheet 47). The reasonableness vel non of intrastate rates is not a matter for the Commission to decide in discrimination cases (American Express Company vs. Caldwell, 244 U. S. 417). If this be a fact, then it follows that the Commission cannot rest its findings of discrimination upon the reasonableness or [fols. 1011-7 & 1012] unreasonableness of the intrastate rates.

The examiner recommends that an order for the removal of the alleged discrimination not be issued by the Commission pending action by the Alabama Public Service Commission. This is in harmony with the practice of the Commission in recent years in these matters, but we think it should go further and withhold any findings in the premises, because we do not believe a finding of this character is justified upon the record. What may be justified in the future when the interstate rates are revised depends upon facts and circumstances then existing and upon another record.

Conclusion

There is one matter we have reserved for comment, on invitation of the examiner, in our conclusion. At the bottom of sheet 39 mention is made of the fact that some consideration was given to the construction of joint-line rates by the addition of certain mileage arbitraries. We have given thought to this matter, but are convinced that it would lead to complications and possibly to unnecessary controversies and disagreements. We much prefer the method that the examiner recommends which is in harmony with the practice of the carriers and the Commission in the revision of rates on other commodities up to this time.

Dated at Montgomery, Alabama, March 20, 1926.

Respectfully submitted.

Hugh White, Attorney. J. H. Alldredge, Chief Examiner for the Alabama Public Service Commission.

[fol. 1013] In United States District Court

[Title omitted]

Motion for Enlargement of Time for Submitting Narrative Statement of Evidence and Settling the Record on Appeal—Filed March 5, 1928; refiled March 8, 1928

Now come defendant railroads (of appellees here), by their solicitors, and respectfully move the Court to enlarge the time for settling the record on appeal, including the consideration of the objections filed by defendants-appellees to the partial statement of evidence filed by plaintiffs-appellants, and for the subsequent filing and approval, in narrative form, as required by Equity Rule 75 (b), of a statement or narrative, or a revised statement or narrative, of the oral testimony and such of the exhibits as are not reproduced in their entirety, and all as contained in the certified copy of the transcript of the record and proceedings before the Interstate Commerce Commission in Docket No. 16295 and Docket No. 16336, and cases consolidated and heard therewith, so as to show, by said narrative statement, in a comprehensive way, the scope, character, and substance

of the evidence and proceedings before the Interstate Commerce Commission as contained in the certified transcript, a copy whereof was introduced at the hearing herein on February 8, 1928, by petitioners-appellants.

Appellees request that the extension of time above sought may be granted to and including April 2, 1928.

For the Defendant Railroad Companies, Appellees:

R. E. Steiner, S. P. Smith, Charles J. Rixey, Solicitors.

[fol. 1014] To Charles C. McCall, Attorney General for the State of Alabama; John Q. Smith, Assistant Attorney General for the State of Alabama; Hugh White, and Edgar Watkins, attorneys for appellants:

Please take notice, that the foregoing motion has been filed in the above-entitled cause in the Clerk's office of the District Court of the United States for the Northern District of Alabama, Southern Division, and that application will be made on March 8th, at 10 o'clock A. M., of that day, to the Honorable W. I. Grubb, Judge of said Court, in chambers at Birmingham, Alabama, for the granting of said motion extending the time as therein requested, and for the entering of an order accordingly making said extension effective to April 2, 1928.

For the Defendant Railroad Companies, Appellees:

R. E. Steiner, S. P. Steiner, Charles J. Rixey, Solicitors.

Washington, D. C., February 29, 1928.

Service is hereby accepted of the within paper.

March 6th, 1928.

Charlie C. McCall, Attorney General, J. Q. Smith, Assistant Attorney General, Hugh White, Edgar Watkins, Attorneys for Complainants.

[fol. 1015] In United States District Court

[Title omitted]

Order Enlarging Time Within Which to Settle the Record—Filed March 5, 1928; Refiled March 8, 1928

It appearing that the record is voluminous, consisting of the transcript of the record of the evidence and proceedings before the Interstate Commerce Commission containing 1,469 typewritten pages of oral testimony of 50 witnesses and 500 exhibits, and that differences have arisen between the plaintiffs-appellants and defendants-appellees with respect to the reducing of the transcript of the record to narrative statement and the settlement thereof, and that additional time is required to prepare and procure the certification of the transcript of the record on appeal, and for other good cause shown, it is ordered—

That the time be and the same is hereby enlarged to and including April 2, 1928, within which there may be prepared and presented to the Court for approval in narrative form as required by Equity Rule 75 (b) a statement or narrative or a revised statement or narrative of the oral testimony and such of the exhibits as are not reproduced in their entirety, all as contained in the certified copy of the transcript of the evidence and proceedings before the Interstate Commerce Commission and introduced in evidence in the Dis-
[fol. 1016] trict Court in this cause.

March 5th, 1928.

W. I. Grubb, United States District Judge.

[fol. 1017] In United States District Court

[Title omitted.]

Stipulation re Transcript of Record—Filed March 31, 1928

On the hearing of the application for preliminary injunction the plaintiffs have offered in evidence a certified full copy of the transcript of the record of the evidence and

proceedings before the Interstate Commerce Commission in the proceeding entitled "Fertilizers and Fertilizer Materials between Southern Points" No. 16295, and other proceedings consolidated and heard therewith upon one record, including Docket No. 16336, entitled "In the Matter of Rates on Fertilizer and Fertilizer Materials and Articles Taking the Same Rates Intrastate within the State of Alabama," consisting of a total of approximately 1469 pages of the oral testimony of the witnesses and approximately 500 exhibits and the same having been received in evidence by the Court; and the plaintiffs having seasonably filed and served with their notice of appeal a condensed narrative of such portions of the transcript of the evidence and proceedings as the plaintiffs deem material and necessary for the determination of the appeal; and the defendants and intervenor denying that such condensed narrative contains all of the testimony and evidence that is or may be necessary or material for the determination of the appeal and [fol. 1018] having in writing seasonably filed objections thereto; and the defendants and intervenor having prepared and seasonably presented and served a statement or narrative (in three sections) of all of the oral testimony of the witnesses; and now for the purpose of reducing and settling the record of appeal pursuant to Equity Rule No. 75, the parties by their respective counsel (and with the approval of the Court) stipulate:

(1) The within and attached narrative (in three sections) is a true and correct transcript in narrative form of all of the oral testimony introduced at the hearings before the Commission as the same is contained in the official typewritten transcript in the proceedings referred to.

(2) The narrative shall be substituted for the original transcript of the oral testimony so certified by the Commission, shall be incorporated in the record on appeal and shall have the same force and effect upon the appeal as the original testimony.

(3) The exhibits in the certified copy of the transcript, numbered from 1 to 500, inclusive, shall stand as original exhibits and with the narrative shall be incorporated in the record on appeal in lieu of the full certified transcript,

with the exceptions of the following exhibits which need not be included in the transcript on the appeal, viz:

No. 30 (Menzies), 4 pages, excerpts from reports of the Interstate Commerce Commission.

No. 34 (Gardner), 4 pages, article from Manufacturers Record, "Story of the Origin and Development of the Fertilizer Industry," by Charles A. Whittle, Secretary, Soil Improvement Committee.

No. 36 (Gardner), bulletin No. 1280, United States Department of Agriculture, October, 1924.

No. 37 (Gardner), report on Fertilizer Industry, Federal Trade Commission, August 19, 1926.

No. 38 (Gardner), report on Fertilizer Industry, Federal Trade Commission, March 3, 1923.

[fol. 1019] Nos. 102 and 103 (Gardner), excerpts from reports of Interstate Commerce Commission.

No. 109 (Gardner), 1 page, excerpts from proposed report of Examiner Disque in Consolidated Southwestern Cases.

No. 131 (Gardner), excerpts from reports of Interstate Commerce Commission.

Nos. 140 and 141 (Sheppard), excerpts from reports of Interstate Commerce Commission.

Nos. 216 and 217 (Ketnar), 5 pages, excerpts from reports of Interstate Commerce Commission.

No. 323 (Davis), 69 pages, bulletin "Results of Fertilizer Experiments," North Carolina Department of Agriculture, September, 1924.

No. 446 (Burke), 9 pages, excerpts from reports of Interstate Commerce Commission.

No. 468 (Orr), 5 pages, Income from Agricultural Production in United States, 1919-1924, published by United States Department of Agriculture.

No. 469 (Orr), 1 page, index number of farm prices 1920-1923, and monthly, January, 1923-July, 1924, by group of commodities.

No. 470 (Witness for Kentucky Railroad Commission) excerpts from bulletin "Monthly Supplement Crops and

Market—Farm Returns 1924," published by United States Department of Agriculture.

No. 483 (Gardner), 26 pages, which relates to fourth-section departures and illustrates the fourth-section relief desired by Southern Railway System lines.

No. 485 (Richmond), 4 pages, which relates to fourth-section relief desired by Atlanta, Birmingham & Atlantic Railway.

No. 495 (Chadwick) which relates to fourth-section relief desired by Mobile & Ohio Railroad Company.

No. 499 (Dalton), 4 pages, excerpts from order of North Carolina Corporation Commission, October 22, 1923, in re application of rates via two designated railroads.

(4) On the hearing of the appeal before the Supreme Court, the original exhibits need not be printed in full; but either side or any party by counsel or the Court or any member thereof may refer to the original exhibits numbered 1 to 500, inclusive, or to any one or more of them or to any part or portion thereof, including any officially published report of the Government of the United States or of any State reefrred to in the transcript, with the same force [fol. 1020] and effect as if the same had been printed in full in the transcript; provided, if either side or any party shall rely on the original exhibits or on any one or more of them or on any part or portion thereof and desires the Court to consider the same, he shall print in full in his brief such exhibits or exhibit or such part or portion thereof as he desires the Court to consider and shall give such description thereof and reference thereto that the same may readily be identified and located.

Charlie C. McCall, J. Q. Smith, Hugh White, Edgar Watkins, Solicitors for Plaintiffs. Blackburn Esterline, Assistant to the Solicitor General, P. J. Farrell, Edward M. Reidy, Solicitors for Interstate Commerce Commission, (per B. E.). R. E. Steiner, S. P. Smith, Charles J. Rixey, Solicitors for Defendant Carriers.

Order

It is ordered that the within and attached stipulation and narrative be and the same are hereby approved; and in

preparing, certifying and transmitting the transcript of the record to the Supreme Court of the United States the Clerk is directed to proceed in accordance therewith.

W. I. Grubb, United States District Judge.

Birmingham, Alabama, March thirty-first, 1928.

[fol. 1021] In United States District Court

[Title omitted]

Additional Stipulation—Filed March 31, 1928

In addition to the sworn answers, and the exhibits thereto attached and made parts thereof, to the original and amended bills, which sworn answers and exhibits therewith were introduced in evidence and relied upon by the defendant railroads on the hearing in the above-entitled cause, the defendant railroads which had appeared and filed answers, or amended answers, to said bill and amended bill likewise offered in evidence, over the objection of plaintiffs, by their counsel, the following:

(a) A duly certified copy of the tentative, or proposed report prepared and filed by an Examiner of the Interstate Commerce Commission, to-wit, Examiner Archer, who, with the Honorable Joseph B. Eastman, member of the Interstate Commerce Commission, heard the testimony and presided over the proceedings in said Docket No. 16295 and allied cases consolidated and heard therewith, which copy of said proposed report, as prepared and filed by Examiner Archer in said consolidated proceedings, was duly certified by the Secretary of the Interstate Commerce Commission;

(b) A duly certified copy of the exceptions filed by the Alabama Public Service Commission to said proposed report in the consolidated proceedings before the Interstate Commerce Commission; and

(c) An extract from petition for rehearing filed by the Alabama Public Service Commission in said consolidated proceedings, under Docket No. 16295, before the Interstate

Commerce Commission, wherein it was stated that the mileage scales of fertilizer rates proposed by the representa-
[fol. 1022] tives of the public (which were the same as the scales prescribed by the Alabama Public Service Commission on or about May 26, 1924, for general application throughout the State of Alabama on intrastate traffic) would, if applied generally throughout southern territory, have reduced the revenues of the carriers in southern territory, based upon the traffic test made in said consolidated proceedings, approximately $1,250,000 per annum.

To the introduction of said copy of said tentative, or proposed, report of Examiner Archer mentioned in (a) above, to the copy of the exceptions of the Alabama Public Service Commission thereto, mentioned in (b) above, and to said quotations from the petition for rehearing filed by the Alabama Public Service Commission mentioned in (c) above, the plaintiffs objected on the ground that the same were irrelevant and incompetent, which objections were overruled, and to which ruling plaintiffs excepted and were allowed an exception. It is agreed that, subject to said exceptions allowed, said certified copies of the documents in (a) and (b) above, which have been duly filed and are of record, shall be incorporated, in the record on appeal; and that the foregoing statement contained in paragraph (c) above shall stand in lieu of the quotations made from the petition for rehearing filed by the Alabama Public Service Commission in said proceedings before the Commission.

Charlie C. McCall, J. Q. Smith, Hugh White, Edgar Watkins, Solicitors for Plaintiffs. Charles J. Rixey, R. E. Steiner, S. P. Smith, Solicitors for Defendant Carriers.

The foregoing stipulation was this day filed and is approved, and in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk of this Court will proceed in accordance therewith.

W. I. Grubb, United States District Judge.

In Chambers, Birmingham, Alabama, March 31st, 1928.

[fol. 1023] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DESIGNATION RECORD—Filed March 31, 1928

The plaintiffs-appellants and the defendants-appellees, having seasonably filed and served their respective præcipes for record and amended præcipes indicating the portions of the record to be incorporated in the transcript on the appeal; upon consideration whereof by the Court, it is ordered that in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk of this Court shall include therein the following matters:

1. The original bill of complaint and exhibits thereto attached, with the exception of Exhibit A, and the orders of the Court indorsed on the bill.

2. The amended bill of complaint and exhibits thereto attached.

3. The answer filed by the United States and the exhibits thereto attached, which it was stipulated by the parties and ordered by the Court should stand as the answer of the United States to the bill of complaint as amended.

4. The intervention and answer of the Interstate Commerce Commission, which it was stipulated by the parties and ordered by the Court should stand as the answer to the bill of complaint as amended.

[fol. 1024] 5. The answer of the Southern Railway Company, et al., with all of the exhibits attached thereto, with the exception of such exhibits as are attached to the answer of the United States.

6. The answer of the Southern Railway Company, et al., to the bill of complaint as amended.

7. The answers of the Louisville and Nashville Railway Company, et al., to the original bill of complaint and to the bill of complaint as amended.

8. The order of February 13, 1928, signed by the three Judges composing the specially constituted District Court and denying the application for interlocutory injunction.

9. Petition for appeal and order thereon; assignment of errors; and appeal bond.

10. Notice of appeal and acknowledgment of service thereon.

11. Citation on appeal and acknowledgment of service thereon.

12. Motion of defendants and order of March 5th, 1928, extending time within which to settle record on appeal.

13. Stipulation of March 31, 1928, including narrative of evidence (in three sections) and original exhibits, and order approving the stipulation.

14. Additional stipulation of March 31st, 1928, including tentative report of Examiner Archer and exceptions of Alabama Public Service Commission thereto, referred to in and required to be copied and transmitted by said stipulation, and order approving stipulation.

[fols. 1025 & 1026] 15. Citation.

16. This order.

W. I. Grubb, United States District Judge.

Birmingham, Alabama, March 31st, 1928.

Approved:

Charlie C. McCall, J. Q. Smith, Hugh White, Edgar Watkins, Solicitors for Plaintiffs-Appellees. Blackburn Esterline, Assistant to Solicitor General, for the United States, P. J. Farrell, Edward M. Reidy, Solicitors for Interstate Commerce Commission (per B. E.). R. E. Steiner, S. P. Smith, Charles J. Rixey, Solicitors for Railway Companies, Defendants-Appellees.

[fol. 1027] Citation, in usual form, showing service on Blackburn Esterline, filed March 8, 1928, omitted in printing.

[fol. 1028] Certificate to foregoing transcript omitted in printing.

[fol. 1029] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed May 31, 1928

Come now the appellants in the above entitled cause and state that the points on which they intend to rely in this Court in this case are as follows:

Points on Which Appellants Intend to Rely

The order of the Interstate Commerce Commission attacked in this proceeding should have been enjoined and annulled for each and all of the reasons set out in the assignments of error (transcript 137), from which assignments arise the points on which appellants intend to rely and which points are comprehended in the following summary:

Point 1. The District Court, three judges presiding, of the Northern District of Alabama, Southern Division, at Birmingham, erred in not enjoining the order of the Interstate Commerce Commission for that said order was beyond the power which the Interstate Commerce Commission could constitutionally exercise, such order regulated intrastate commerce not shown to affect or burden commerce among the States.

[fol. 1029½] Point 2. The court erred in not enjoining the order for that such order was entered in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States in particulars as follows:

(a) There was no issue or testimony before said Commission or before said court relating to the relationship of the rates on transportation wholly within the State of Alabama and the rates prescribed by said order to take the place of such intrastate rates.

(b) There was no issue raised justifying and no evidence to support the rates established by said order and made applicable thereby both to single and to joint line hauls wholly within the State of Alabama, both the issues and the evidence referred exclusively to rates for single lines lower than and different from the rates over two or more lines.

Point 3. The court erred in not enjoining the order for that such order was beyond the statutory power of the Interstate Commerce Commission in so far as it sought to regulate intrastate commerce and controlled rates charged for the transportation of property wholly within the State of Alabama.

Point 4. The court erred in not enjoining said order as the Interstate Commerce Commission in entering the order acted arbitrarily and unjustly, and prescribed rates for the transportation of property wholly within the State of Alabama contrary to all the evidence and without any evidence to support its action in particulars as follows:

(a) The issue raised and heard was whether or not the rates on the transportation of property wholly within the State of Alabama in their relation to the rates on interstate transportation violated section 3 of the Interstate Commerce Act as amended by Transportation Act 1920, and [fol. 1030] as to many of the rates on transportation wholly within the State of Alabama there was no evidence of any such violation.

(b) There was no issue raised by the pleadings of the parties or order of the Interstate Commerce Commission between the rates on the transportation of property wholly within the State of Alabama and the rates found reasonable on interstate transportation and ordered applied intrastate in Alabama.

(c) There was no evidence to support a finding that all the rates on transportation wholly within the State of Alabama were in competition with interstate transportation.

(d) The order in so far as it applies on interstate transportation prescribes only maximum rates, while as applied on intrastate transportation in the State of Alabama it prescribes rates that are both maximum and minimum rates.

(e) Import rates on fertilizer materials are a part of the transportation charge and these rates were left on a group basis while domestic rates intrastate in Alabama were placed on a mileage scale.

(f) The order applicable to transportation wholly within the State of Alabama applies to all intrastate rates although some intrastate rates were higher than the prescribed rates interstate.

(g) There was no hearing, evidence or issue supporting a finding that all the rates on transportation wholly within the State of Alabama constituted any burden on interstate transportation.

[fol. 1031] (h) There was no evidence to support any order fixing intrastate rates on short lines of railway wholly within the State of Alabama.

(i) There was no evidence to support any order fixing the same rates applicable to single and to joint line hauls.

Parts of the Record Necessary to be Printed

No issue is made in this case with reference to the validity of the order in so far as it prescribes rates applicable to interstate transportation nor in so far as it prescribes rates intrastate in states other than Alabama, the sole issue relating to the order in so far only as it affects transportation within the State of Alabama. Therefore, that part of the narrative of the testimony which relates to interstate rates and to intrastate rates in states other than Alabama is not material and need not be printed. Counsel for the appellees, with the approval of the court, required the inclusion in the transcript of all testimony before the Interstate Commerce Commission and as to much of which appellants do not deem that it is necessary to be printed, and the appellants further state that only the following parts of the record, as filed in this court, need be printed by the Clerk for the hearing of the case and that such parts include all the record having any relevance to the issues made in this appeal:

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The original Bill of Complaint	1-19
Order setting for hearing	20
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Exhibit C to Bill of Complaint	25-26
Exhibit D to Bill of Complaint	27-28
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The Intervention and Answer of the Interstate Commerce Commission	40-44
[fol. 1032] The Answer of the Alabama Great Southern Railroad Company, et al., with exhibits 4, 5, 6, and 7 thereto attached	45-102
The answer of the Alabama Great Southern Railroad Company, et al., to the Amendment to the Bill of Complaint	114-126
The Answer of the Louisville and Nashville Railroad Company, et al., to the original Bill of Complaint and to the Bill of Complaint as amended	127-128
The order of February 13, 1928 signed by the three judges composing the specially constituted district court, denying the application for an interlocutory injunction	129-131
The Assignment of Errors	137-139
The Stipulation of March 31, 1928 with reference to the narrative of evidence	1017-1020

Of that narrative of evidence there should be printed the following:

Statement of Eastman, Commissioner	143-144
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and his testimony on page 181, except last paragraph, page	181
The testimony of E. R. Gardner, beginning top p. 257 and to and including the first paragraph, page	261
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Statement of Commissioner Eastman, last paragraph p. 335 and top p. 336	335-336
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The testimony of R. O. E. Davis in full	581-617
The testimony of Edward A. O'Neal in full	617-621
The testimony of A. D. Strobhar in full	621-631
The testimony of H. R. Bates in full	631-648
[fol. 1033] The testimony of T. A. Bosley in full	660-693
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Respectfully submitted.

Edgar Watkins, 403 Atlanta Trust Co. Bldg., Atlanta, Georgia; Charlie C. McCall, John Q. Smith, Hugh White, Montgomery, Alabama, Attorneys for Appellants.

[fols. 1034 & 1035] STATE OF GEORGIA,
County of Fulton:

Personally appeared before the undersigned authority Edgar Watkins, who on oath says that he is attorney for the appellants, the State of Alabama and Alabama Public Service Commission, in that certain case pending in the Supreme Court of the United States returnable to the October Term, 1928, entitled State of Alabama, et al. vs. United States, et al; that complying with paragraph 9 of Rule 11 affiant has designated in said cause the points on which appellants rely and the part of the record necessary to be printed, the original of which designation is forwarded to the Clerk of the Supreme Court of the United States herewith; that a copy of said original has this day been sent by registered mail, under a properly stamped envelope, to all the attorneys of record for the appellees, to-wit:

Mr. Blackburn Esterline, Attorney for the United States, Washington, D. C.;

Mr. E. M. Reidy, Attorney for the Interstate Commerce Commission, Washington, D. C.;

Mr. W. N. McGehee, Attorney for the Southern Railway Company and other railway appellees, Washington, D. C.;

Mr. S. P. Smith, Attorney for all the railway appellees, Birmingham, Alabama;

Mr. R. E. Steiner, Attorney for some of the railway appellees, Montgomery, Alabama.

Edgar Watkins.

Sworn to and subscribed before me this 29th day of May, 1928. Alice C. Boykin, Notary Public, State of Georgia at Large, Atlanta, Ga. [Seal.]

[fol. 1036] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEE RAILROAD COMPANIES OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed June 14, 1928

To the Clerk:

Appellants having filed their designation of the parts of the record to be printed, appellees, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company,

Southern Railway Company, The Alabama Great Southern Railroad Company, Central of Georgia Railway Company, Louisville and Nashville Railroad Company, Mobile and Ohio Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, Illinois Central Railroad Company, and The Western Railway of Alabama, by their respective counsel, further designate for printing as additional parts of the record which they think material and necessary, the following matter:

1. The full narrative of the testimony before the Interstate Commerce Commission in Docket 16295, Fertilizer and Fertilizer Materials Between Southern Points, and cases consolidated therewith, consisting of 804 typewritten pages, [fol. 1037] as approved by the United States District Judge by order signed March 31, 1928.

2. The said order, signed by the Hon. W. I. Grubb, United States District Judge, on March 31, 1928, approving said narrative statement of testimony.

3. The order signed by the Hon. W. I. Grubb, United States District Judge, approving the stipulation dated March 31, 1928, and signed by counsel for appellants and counsel for appellees.

4. The additional stipulation, signed by counsel for appellants and by counsel for the railroad companies, appellees, providing for the inclusion in said record on appeal of the duly certified copy of the tentative or proposed report of Examiner Archer of the Interstate Commerce Commission in Docket No. 16295 and cases consolidated and heard therewith before the said Interstate Commerce Commission; also duly certified copy of the exceptions filed by the Alabama Public Service Commission to said proposed report in the consolidated proceedings before the Interstate Commerce Commission, and an extract from the petition for rehearing filed by the Alabama Public Service Commission.

5. The order signed by Hon. W. I. Grubb, United States District Judge, approving said additional stipulation.

6. The tentative report of Examiner Archer of the Interstate Commerce Commission entered in Docket No. 16295, and consolidated cases, and mentioned in said additional stipulation.

7. The exceptions filed by and on behalf of the Alabama Public Service Commission to the tentative report of Examiner Archer in Docket No. 16295, and consolidated cases, before the Interstate Commerce Commission, as described in said additional stipulation.

8. The extract from the petition for rehearing (first line on page 25 thereof to end of paragraph) filed by the Ala- [fols. 1038-1040] bama Public Service Commission in said consolidated proceedings under Docket No. 16295, before the Interstate Commerce Commission, wherein it was stated that the mileage scales of fertilizer rates proposed by the representatives of the public would, if applied generally throughout southern territory, have reduced the revenues of the carriers in southern territory, based upon the traffic test made in said consolidated proceedings, approximately $1,250,000 per annum, the inclusion of said extract from said petition for rehearing in the record on appeal having been provided for in said additional stipulation signed by counsel for appellants and appellee railroad companies and approved by the United States District Judge.

9. The objections on behalf of defendants-appellees, signed by their respective counsel, to the document filed by plaintiffs-appellants entitled "Condensed and Narrative Statement of all of the Evidence Included in the Record Necessary to a Determination of the Issues Made in this Cause, etc."

10. The replication of the railroad companies, appellees, to the paper filed by plaintiffs-appellants, purporting to be an answer to the objection filed by defendants-appellees to the alleged statement of evidence filed by plaintiffs-appellants.

F. W. Gwathmey, W. A. Northcutt, S. P. Smith, W. N. McGehee, Solicitors for Appellee Railroad Companies.

Washington, D. C., June 14, 1928.

[fols. 1041 & 1042] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed June 15, 1928

To the Clerk:

Appellants having filed their designation of the parts of the Record to be printed, the appellees, United States of America and Interstate Commerce Commission, by their respective counsel, further designate for printing such parts as the appellants failed to designate of the full narrative of testimony approved by the District Judge in his order signed March 31, 1928; so that the entire narrative of 804 typewritten pages shall be printed which the counsel for the aforesaid appellees deem material and necessary for consideration and determination of the appeal.

June 14, 1928.

Blackburn Esterline, Assistant to the Solicitor General for the United States of America, Daniel W. Knowlton, Edward M. Reidy, Solicitors for Interstate Commerce Commission.

Endorsement: File No. 33,475. N. Alabama D. C. U. S. Term No. 166. The State of Alabama and Alabama Public Service Commission, appellants, vs. The United States of America, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, et al. Filed May 31st, 1928. File No. 33,475.

(3654)

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. 166.

THE STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION,

Appellants,

vs.

THE UNITED STATES OF AMERICA, ATLANTIC COAST LINE RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA

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Showing rates complained of, interstate and intrastate, and rates later fixed as to which discrimination was found.

	Miles	Per ton	Record
Interstate rates in effect at hearing	112	$2.82	450
Interstate rates fixed after hearing	112	2.45	450
Alabama State rates, 1 line	112	2.15	450
Alabama State rates, 2 line	112	2.45	204
Interstate rates in effect at hearing	192	3.49	450
Interstate rates fixed after hearing	192	3.20	450
Alabama State rates, 1 line	192	2.95	450
Alabama State rates, 2 line	192	3.15	204
Interstate rates in effect at hearing	29	1.69	457
Interstate rates fixed after hearing	29	1.50	457
Alabama State rates, 1 line	29	1.25	457
Alabama State rates, 2 line	29	1.55	204
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Interstate rates fixed after hearing	27	1.35	456
Alabama State rates, 1 line	27	1.25	456
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Mr. Drescher, for the carriers, said:

"It is a fact that the Alabama scale beyond 220 miles is generally higher than our so-called normal scale. There are instances, of course, in which your scale is less than our local scale. Our normal scale carries carload minimum weight of 15 tons; the Alabama scale carries a carload minimum weight of 20 tons, except some few items." (R. 475).

"I would have found some of the Alabama rates to be higher than a good many of the maximum rates, yes." (R. 476).

EXHIBIT B

Bringing in one table Alabama intrastate rates (R. 204, 205) and interstate rates fixed by the Interstate Commerce Commission (R. 83, 84, 119-121):

Rates in Cents per Ton of 2,000 Pounds.

Distance	1	2	3	4	5	6
5	80			96		100
10	90	120	132	108	138	100
15	100	130	143	120	150	110
20	110	140	144	132	162	120
25	120	150	155	144	174	125
30	125	155	171	150	180	135
35	130	160	176	156	186	140
40	135	165	182	162	192	150
45	140	170	187	168	198	155
50	145	175	193	174	204	165
55	150	180	198	180	210	170
60	155	185	204	186	216	180
65	160	190	209	192	222	185
70	165	195	215	198	228	195
75	170	200	220	204	234	200
80	175	205	226	210	240	205
85	180	210	231	216	246	210
90	185	215	237	222	252	215
95	190	220	242	228	258	220
100	195	225	248	234	264	225
110	205	235	259	246	276	235

120	215	245	270	258	288	245
130	225	255	281	270	300	255
140	235	265	292	282	312	265
150	245	275	303	294	324	275
160	255	275	303	306	326	285
170	265	285	314	318	338	295
180	275	295	325	330	350	305
190	285	305	336	342	362	315
200	295	315	347	354	374	320
210	305	325	358	366	386	335
220	315	335	369	378	398	335
230	325	345	380	390	410	345
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250	345	365	402	414	434	360
260	355	375	413	426	446	365
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EXPLANATION OF COLUMNS

The specific commodity Rate Tables shown above shall be applied as follows:

Rate Table No. 1. For single-line application between points within the state of Alabama for the maximum distance of each line referred to in the report as standard lines. (N. B. R. 205 erroneously uses "short" instead of "standard" lines.)

Rate Table No. 2. For joint-line application between points within this state located on two or more of the severally named railroads referred to in the report as standard lines.

Rate Table No. 3. For joint-line application between points within this state where the commodity moves over one or more standard lines and over one or more short lines included in the report.

Rate Table No. 4. For single-line application between points within this state for the maximum distance of each line referred to in the report as short lines.

Rate Table No. 5. For joint-line application between points within this state where the commodity moves exclusively over two or more of the carriers referred to in the report as short lines.

Rate Table No. 6. For joint and single-line application over standard lines fixed for interstate transportation by the Interstate Commerce Commission. (For short or weak lines an arbitrary fifty cents per ton is added).

*The 270 mile distance, Column 6, is 375.

Supreme Court, U.
FILED
FEB 15 1929
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 166

STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION, *Appellants*,

vs.

UNITED STATES, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

BRIEF FOR ALABAMA CARRIERS, APPELLEES

W. A. NORTHCUTT,
F. W. GWATHMEY,
CHARLES CLARK,
W. N. MCGEHEE,
Counsel for Alabama Carriers, Appellees.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

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OCTOBER TERM, 1928.

No. 166

STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION, *Appellants*,

vs.

UNITED STATES, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

BRIEF FOR ALABAMA CARRIERS, APPELLEES

STATEMENT OF THE CASE.

This is an appeal, under the Act of October 22, 1913, (38 Stat. 219), from an order of the District Court of the Northern District of Alabama, Southern Division, (Walker and Foster, Circuit Judges, and Grubb, District Judge), entered on February 14, 1928, dismissing a bill brought by the State of Alabama and the Alabama Public Service Commission to enjoin and set aside certain orders of the Interstate Commerce Com-

mission, hereinafter called the Commission, in so far as said orders affected the intrastate rates on fertilizers and fertilizer materials and articles taking the same rates, in carloads, in Alabama. (R. 236.)

On July 30, 1924, a petition was filed with the Commission on behalf of all railroads operating in Alabama, wherein it was alleged that the Alabama Public Service Commission had, by order, required the railroads to establish and maintain rates on fertilizers and fertilizer materials within said State which were less than those permitted or required to be established by the Commission on interstate traffic, and that the maintenance of said rates would cause and result in undue and unreasonable preference and advantage to intrastate commerce and intrastate shippers and localities and in undue and unreasonable prejudice of interstate commerce and interstate shippers and localities and would unjustly and unreasonably discriminate against interstate commerce, in violation of Section 3, and subdivisions (3) and (4) of Section 13 of the Interstate Commerce Act. (R., 188-201.)

Subsequently, on October 14, 1924, the Commission issued an order, Docket No. 16336, instituting an investigation with respect to the Alabama intrastate rates, which order was, in part, as follows:

> "*It is ordered*, (1) That an investigation be, and it is hereby, instituted to determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the

other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist." (R. 206-207.)

The proceeding with respect to the Alabama intrastate rates was consolidated with a proceeding which had been ordered by the Commission on its own motion, and entitled "Fertilizers and Fertilizer Materials between Southern Points," Docket No. 16295. This was a general investigation to determine upon a basis of interstate rates for the movement of fertilizers and fertilizer materials throughout Southern territory which would be reasonable and free from undue preference and prejudice, and which would conform "as nearly as may be" to the provisions of the Fourth Section of the Interstate Commerce Act. (R. 37; 207-208.) After extensive hearings, in which the Alabama Public Service Commission and the State of Alabama participated and introduced testimony, filed briefs, and appeared in oral argument, the Commission found, among other things, that:

> "The maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce." (R., 101.)

No order was entered with respect to the Alabama intrastate rates, the Commission stating in its opinion that:

> "It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment." (R., 102.)

The authorities of the State of Alabama refused to permit the Alabama intrastate rates to be increased to the level found reasonable by the Interstate Commission and the level to which that Commission found that said rates should be increased in order to remove the unjust discrimination and undue prejudice against interstate commerce resulting from the rates prescribed and enforced in Alabama by the Alabama Public Service Commission. (R. 10.) Thereupon certain carriers operating in the State of Alabama filed a supplemental petition with the Interstate Commerce Commission and sought an order under which rail carriers in Alabama would be authorized to apply intrastate in Alabama the rates which had been prescribed by the Commission for general application throughout Southern territory. (R. 11.) Subsequently, on October 3, 1927, the Commission entered such an order against certain carriers operating in the State of Alabama, later amended to include all carriers operating in that State, which provided, in part, as follows:

> "*It is ordered*, That the common carriers by steam railroad, parties to this proceeding * * *, according as they respectively participate in the transportation, be, and they are hereby, notified

and required to cease and desist, on or before January 3, 1928, from practising the undue prejudice, undue preference and advantages and unjust discrimination found in said report to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State of Alabama.

"*It is further ordered,* That the said carriers, according as they respectively participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 3, 1928, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain rates and charges for the transportation of fertilizers and fertilizer materials in intrastate commerce within the State of Alabama which shall be not less, for corresponding distances, than the rates contemporaneously applied by said carriers, in accordance with our order of July 19, 1926, and as subsequently amended, to the transportation by said carriers of fertilizers and fertilizer materials between points in the State of Alabama and points in other states of the United States." (R. 24-25; 225.)

It is this order of October 3, 1927, as subsequently amended, which the appellants sought to enjoin. The lower court entered an order denying the application for an interlocutory injunction (R. 236) and on March 8, 1928, an appeal to this court was allowed. (R. 239.)

In this separate brief for the appellee carriers we desire to emphasize particularly the nature and scope of the proceedings and evidence before the Interstate Commerce Commission, as the result of which the Commission entered the order complained of by appellants,

for the purpose of showing beyond possibility of question that the Commission proceeded in all respects in accordance with the power and authority with which it has been vested; and further, that under the evidence submitted no different order could have been entered by the Commission.

PROCEEDINGS BEFORE THE COMMISSION.

In as much as the Commission consolidated Docket No. 16336, the Alabama case, and also Docket Nos. 16335 and 16484, bringing in issue intrastate rates on fertilizer and fertilizer materials in South Carolina and Georgia, respectively, with Docket No. 16295, the general investigation which the Commission ordered on its own motion for the purpose of determining upon a basis of rates for the movement of fertilizer and fertilizer materials throughout Southern territory, (R. 216) it is necessary to a clear understanding of what transpired in these consolidated proceedings and the scope and nature thereof to have regard not merely to the portion of the record relating specifically to Docket No. 16336, the Alabama case, and the orders entered therein, but to the entire record in the general investigation.

1.

The Announced Purpose and Scope of the Investigation Instituted and Conducted by the Commission.

The report of the Commission in the general investigation, and the cases consolidated therewith for hearing and disposition, is entitled *Fertilizers and Fertili-*

zer Materials Between Southern Points" reported in 113 I. C. C. at pages 389.* (R. 33-131.)

* * * * * * * * *

On March 9, 1925, a notice was issued by the Commission outlining in detail the provisions of the general investigation, Docket No. 16295 and consolidated cases, and indicating certain subjects which it was thought should be developed at the hearings. In that notice, served on all parties of record, it was said:

> "The purpose of the proceeding is to determine upon a basis of rates for interstate application throughout the territory involved which will be reasonable for the transportation of this particular traffic, will be free from undue prejudice and preference, and will conform to the fourth section of the act. With the proceeding there have been consolidated for hearing investigations under section 13 of the act instituted upon petition of the carriers and involving alleged undue preference of intrastate traffic in Alabama, South Carolina, and Georgia, and alleged undue prejudice to interstate traffic. *While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can fairly and appropriately be used as a basis for achieving harmony between the interstate and intrastate rates will be kept constantly in mind. With this in view, testimony relating to intrastate adjustments will be freely admitted."* (R. 216-217.)

Then follows the statement that, as an initial step in the investigation, the respondent carriers would be ex-

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*Two supplemental reports were issued which are reported in 123 I. C. C. at page 193, and 129 I. C. C. page 215. (R., 18,131.) These supplemental reports dealt with measure of relief to be accorded various short or weak lines in the Southeast, and with petitions for relief from the long-and-short-haul provision of Section 4 of the Interstate Commerce Act.

pected to present at the first hearing the basis of rates which they believed should be established, together with evidence supporting that basis. A list of some of the more important subjects which the Commission thought should be developed through the evidence is set forth in this notice. (R. 216-217.)

By reference to the order of October 7, 1924, in Docket 16295, inaugurating the *General Investigation*, it will be seen that it is therein recited—

(a) That in many instances interstate rates on fertilizers and fertilizer materials between points in Southern Classification territory differ materially for substantially similar hauls, and that many of said rates are higher for the shorter distances than for the longer distances over the same line or route; and

(b) That from numerous formal and informal complaints to the Commission it appeared that said interstate rates on fertilizers and fertilizer materials were, in general, unsatisfactory to the manufacturers and shippers, and that a general revision thereof had been proposed by the carriers, and that petitions had been filed by carriers operating in the states of South Carolina and Alabama (and later in Georgia), alleging that the rates on this traffic in effect within those states caused undue and unreasonable advantage, preference, and prejudice as between persons and localities in interstate commerce, on the one hand, and intrastate commerce, on the other, and an undue burden and unjust discrimination against interstate commerce. (R. 208-209.)

Thereupon said investigation was by the Commission instituted on its own motion—

> "Into and concerning said interstate rates on fertilizer, fertilizing compounds, and fertilizer ma-

terials, and the charges resulting therefor, applicable between points in the territory described (being Southern Classification territory), with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons, and to making such order or orders as may be proper in the premises." (R. 208-209.)

In Docket 16336, by the Commission's order dated October 14, 1924, which concerned rates on fertilizer and fertilizer materials within the state of Alabama, it was recited:

(a) That a petition had been filed on behalf of *all the steam railroads* operating in the state of Alabama, averring that the Alabama Public Service Commission by the order therein designated (dated May 26, 1924), had required the railroads in Alabama to establish intrastate rates on this traffic which were less than those permitted or required to be established by the Interstate Commission for interstate traffic;

(b) That said railroads, petitioners, alleged that the observance by the railroads operating in Alabama of the order of the Alabama Commission would cause and result in indue and unreasonable preference and advantage to intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce, and would result in unjust and unreasonable discrimination against interstate commerce; and

(c) That by said petition there had been brought into issue rates imposed by the authority of the State of Alabama.

It was accordingly ordered—

(1) That an investigation be instituted, and it was thereby instituted, by the Commission to—

"Determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, caused or will cause any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist;

"(2) That all railroads subject to our jurisdiction operating within said state of Alabama be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the State of Alabama be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Alabama, at Montgomery, Ala., and to the Alabama Public Service Commission, at Montgomery, Ala.

"(3) That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C. (R. 207-208.)

At the opening of the first hearing in these consolidated proceedings at Atlanta, Georgia, on April 20, 1925, Commissioner Eastman, presiding, made the following statement:

"This is Docket No. 16256, an investigation on the Commission's own motion of interstate rates on fertilizer, fertilizing compounds and fertilizer

materials between points in Southern Classification Territory, including rates between points in that territory on the one hand, and the north bank of the Ohio River and Helena, Ark., and points in Virginia on the other. There have likewise been consolidated for hearing at this investigation, Docket No. 16335, rates on fertilizers and fertilizer materials within the state of South Carolina; Docket No. 16336, rates on fertilizers and fertilizer materials within the state of Alabama; and Docket No. 16484, rates on fertilizers and fertilizer materials within the state of Georgia; these three dockets being investigations under Section 13 of the Interstate Commerce Act instituted upon petition of the carriers, and involving alleged undue preference on intrastate traffic and alleged undue prejudice to interstate traffic in the three named states. Various notices have been sent to all interested parties in regard to this investigation, indicating some of the points which the Commission felt ought to be developed in connection with this investigation. I think it unnecessary to burden the record by repeating the substance of those notices at this time." (R. 246, 247)

During the progress of the same hearing, Commissioner Eastman reiterated the purpose of the proceeding, as it concerned intrastate rates, and made it plain that the Commission was endeavoring to prescribe a level of interstate rates and to fix a scale to cover these rates which could fairly and appropriately be used for both intrastate and interstate rates throughout southern territory. On this point he said (R. 412, 413):

"Commissioner Eastman: The intrastate rates in Mississippi are not in issue in the sense that we could make any order with respect to them in this case, but we stated in the notice with respect to this proceeding, following the precedent set in

the class rate case, where the intrastate rates were also not in issue, as follows: 'While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can fairly and appropriately be used as a basis for achieving harmony between the interstate and intrastate rates will be kept constantly in mind.' With that end in view, that is with the end of fixing interstate rates which can fairly and appropriately be used as a basis for bringing about harmony between the two classes of rates, testimony relating to the intrastate adjustments will be freely admitted."

The foregoing references to the record indicate some of the reasons which induced the Commission to institute the general investigation of fertilizer rates throughout southern territory. The authorities of the State of Alabama did not question the power of the Interstate Commerce Commission to institute an investigation of this sort. They did not question the fact that in so doing the Commission proceeded within the scope of its powers and duties as imposed not only by the Interstate Commerce Act, including particularly Sections 3 and 13 of said Act, but also by the requirements of the so-called Hoch-Smith Resolution of Congress whereby the Commission is directed to effect a "redistribution" of rates to the end that all commodities and classes of traffic shall contribute, upon a proper and equitable basis, to the maintenance of the transportation system. Neither did the Alabama authorities question the fact that a general investigation of this character, which was in terms made territorial in its scope and included Southern territory as a whole, represents the best and most practicable procedure whereby the Commission can give effect to the

foregoing statutory requirements. On the contrary, the Alabama Public Service Commission, together with the Commissions of other southern states, appeared and participated throughout the hearings, filed briefs, and were heard upon oral argument. (R. 37, 246, 812.)

2.

The Proceedings Before the Commission, Including the Expressions in the Commission's Report, Show Clearly that the Commission Acted Throughout in the Exercise of the Powers and Duties Conferred by Section 13 of the Interstate Commerce Act, as Well as Under Section 3.

In the report rendered by the Commission in Docket 16295 and consolidated cases heard therewith, 113 I. C. C. 389, it will be seen that in the opening sentence it was pointed out at page 391 that—(R. 36)

> "Dissatisfaction on the part of shippers and users as well as of carriers with the rates on commercial fertilizer and fertilizer materials in southern territory has for some time been increasingly evident.
>
> Our decisions upon such formal complaints as have been brought have served only to mitigate the discontent in the particular sections affected.
>
> Interstate rates vary greatly for substantially similar hauls; many indefensible fourth-section departures exist; and the intrastate rates which have been enforced by some of the States are attacked by the carriers as unreasonably low, and it is alleged that they adversely affect manufacturers and dealers shipping into those States over interstate routes. During 1924 three petitions were filed with us by carriers seeking relief under section 13 of the interstate commerce act from the

intrastate rates, respectively, in South Carolina, Alabama, and Georgia."

The Commission then said that three times the rates on fertilizer from Norfolk to points in North Carolina had been under investigation by it in what had come to be known as the *Royster cases;* that the rates there finally prescribed were deemed unsatisfactory by the North Carolina Corporation Commission; and that the foregoing conditions and variations in the rate levels, both interstate and intrastate, obtaining throughout southern territory, led the Commission on October 7, 1924, to institute this general investigation on its own motion. (R. 36) The purpose of this proceeding was then briefly summarized in the report (113 I. C. C. at page 392, R. 31) as follows:

> "The purpose of this proceeding, therefore, is to determine upon a basis of interstate rates for the movement of fertilizers and fertilizer materials throughout southern territory which will be reasonable and free from undue prejudice and preference, and which will conform, as nearly as may be, to the provisions of the fourth section. With the proceeding have been consolidated for hearing and disposition the three section 13 cases already referred to. While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can appropriately and fairly be used as a basis for uniformity in both classes of rates has been recognized from the outset."

It is then stated that—

> "At the initial hearing the parties were advised that the principles of the so-called Hoch-Smith resolution are now a part of the law, and that conclusions would be reached with those principles in mind." (R. 37)

Referring to the part taken by the state commissions, it was stated (113 I. C. C. at page 392, R. 37):

> "The state commissions of Alabama, Georgia, Florida, Mississippi, Kentucky, and North Carolina were represented at the hearings, and they took an active and helpful part in developing the record."

It should be noted that the special investigation ordered under Docket 16336 concerning Alabama intrastate rates cannot be considered alone, but must be considered with the *General Investigation*, since the two cases were consolidated and heard together, the *General Investigation* having for its purpose to fix the rate level throughout southern territory which should govern interstate rates and serve as a standard and measure for bringing the intrastate rates into harmony therewith. In fixing that general rate level, the Commission considered not merely the interstate rates, but the intrastate rates in the several southern states and the tonnage and revenue handled thereunder and derived therefrom. (R. 33-131) In determining the rate level to control for the future, the entire field was investigated. There were before the Commission the state scales and the levels of intrastate rates in Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee and Kentucky. A table inserted on page 397 of its report (R. 44-45) shows representative scales for intrastate application in each southern state, compared with the carriers' proposed scale submitted in the General Investigation. It had before it an analysis of the tonnage of this traffic which moved intrastate, and also interstate. (R. 69-71) It pointed out that about seventy

per cent of the tonnage of fertilizer and fertilizer materials in southern territory is *intrastate traffic* (113 I. C. C. 397, R. 69). It follows that of the total tonnage of this traffic only about thirty per cent is interstate.

Where so large a preponderance of the total tonnage handled within southern territory is intrastate, it is apparent how necessary it is for the intrastate traffic to bear its fair share of the transportation burden and to contribute ratably and equally to the carriers' revenue, if an unjust discrimination against and undue burden upon interstate traffic is to be avoided. Obviously, if the states are to be free to determine the respective levels of intrastate rates in the several states and to do as the State of Alabama has sought to do, to maintain intrastate rates materially lower than the interstate rates prescribed and fixed by the Commission, where such a large percentage of the traffic is intrastate in southern territory, it will follow that the loss resulting from the lower rates on intrastate traffic must be made up by increasing the interstate rates on fertilizers and fertilizer materials, or by placing the additional burden upon other interstate traffic.

The Commission did not view the situation from the standpoint of interstate traffic alone in fixing the rate level. Its revenue test, caused to be made by the carriers during the progress of the hearing, included both intrastate and interstate traffic and the revenues derived therefrom (R. 69-71). The scale which it determined upon was one which it considered reasonably low and one made with a view to placing as light a burden as possible upon fertilizers and fertilizer materials, for the reasons stated in its report and in the light of the Hoch-Smith Resolution, with the positive

expectation and the avowed purpose of bringing intrastate rates into conformity therewith and using the scale so promulgated by it to reconcile the differences and to eliminate the lack of harmony between the interstate and the several intrastate adjustments. A doctrine which would permit the states to depart freely from the standard and the level of rates prescribed by the Commission for interstate traffic, and which recognized any right in the states to maintain substantially lower rates than those promulgated by the Commission for interstate application, would destroy the fundamental purposes of the Interstate Commerce Act, as amended by the Transportation Act, and would render nugatory the efforts of the Commission to adjust rates and establish rate levels which would permit it to discharge its duties under the Interstate Commerce Act, as amended. That such a doctrine, if recognized, would burden interstate commerce is clearly demonstrated and requires no argument to support it. The Commission has pointed out these consequences time and again, and clearly the question of revenue burden and unjust discrimination against interstate commerce flowing from the lower level of intrastate rates was likewise recognized and condemned by this Court in the *Wisconsin case*, 257 U. S. 563, 66 L. Ed. 371.

In that case this Court, after reviewing the law as applied prior to Federal control, and the provisions of the Transportation Act designed to meet the exigencies of the situation brought about by Federal control and the transition from that control to private operation, said (257 U. S. at page 585, 66 L. Ed. 382):

> "It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress, through the Interstate

> Commerce Commission, exercised, was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered, and the abolition of rebates."

After thus stating the extent to which the old law went in this direction, the Court then said:

> "The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in Section 15a to be one of the purposes of the bill."

It must be borne in mind in this connection, and in the light of this quotation, that the Commission undertook in this *General Investigation*, heard along with certain other investigations concerning intrastate rates, to fix the level of the interstate rates and to prescribe the scale to be observed in the future upon both interstate and intrastate traffic uniformly throughout southern territory.

Bearing in mind always that the Commission has found as a fact, after analysis of the movement, that seventy per cent of the tonnage of fertilizer and fertilizer materials moving between points in southern territory is intrastate traffic (R. 69), and that the intrastate traffic must contribute its fair share of transportation revenues, it is apparent that a substantially lower level cannot be permitted in favor of intrastate traffic than that which has been prescribed and which governs the traffic moving interstate.

This Court in the *Wisconsin case, supra,* after having used the language above quoted, then immediately pointed out (66 L. ed. at page 382):

> "Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty per cent of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. *The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system.*" (Italics supplied)

And again (66 L. ed. at page 384), after pointing out that the same transportation systems are used for both state and interstate transportation, it is said:

> "The states are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it *unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business.* Congress, as the dominant controller of interstate commerce, may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work." (Italics supplied)

And, finally, in response to the argument that the construction upheld in the *Wisconsin case* would give the Commission unified control of both interstate and intrastate commerce, this Court said (66 L. ed. at page 384):

> "It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves *on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.*" (Italics supplied.)

The Court then adds:

> "It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper *an application to the Interstate Commerce Commission for appropriate exception.* So, too, in practice, when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid Federal order as to the intrastate rates * * *."

Commenting upon paragraph 4 of Section 13 of the Interstate Commerce Act, this Court said in the *Wisconsin case* (66 L. ed. at page 382):

> "When we turn to paragraph 4, Section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail relation between that provision and the purpose of Section 15a. If that purpose is interferred with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, and unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words."

In answer to the contention of counsel for the Railroad Commission that the words "undue, unreasonable and unjust discrimination against interstate or foreign commerce" were tautological and meant no more than an undue and unreasonable discrimination as between persons and localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, which precede them in paragraph 4 of Section 13, this Court said:

> "In view of their apt application to the most important purpose of the legislation, we are not at liberty to take such a view. If 'undue, unreasonable and unjust discrimination against interstate or foreign commerce,' are tautological why are they followed by the phrase 'which is hereby prohibited and declared to be unlawful'? To accompany a meaningless phrase with words of such special emphasis would be unusual."
>
> "It is urged that in previous decisions, notably

the Minnesota Rate Cases (Simpson v. Shepard), 230 U. S. 352, 57 L. ed. 1511, 48 L. R. A. (N. S.), 1151, 33 Sup. Ct. 729, Ann. Cas. 1916A, 18, the Shreveport Case, 234 U. S. 342, 58 L. ed. 1341, 34 Sup. Ct. Rep. 833, *supra*, and the Illinois C. R. Co. Case, 245 U. S. 493, 62 L. ed. 425, P. U. R. 1918C, 1279, 38 Sup. Ct. Rep. 170, *supra*, the expression 'unjust discrimination against interstate commerce' was often used when, as the law then was, it could only mean discrimination as between persons and localities, and therefore that it is to be given the same limited meaning here. But, here, the general words are used after discrimination against persons and localities has been specifically mentioned. The natural inference is that, even if they include what has gone before, they mean something more. When we find that they aptly include a kind of discrimination against interstate commerce which the operation of the new act for the first time makes important, and which would seriously obstruct its chief purpose, we cannot ignore their necessary effect."

In *Dayton-Goose Creek R. Co. v. United States*, 263 U. S. 456, 68 L. ed. at page 398, in referring to the *Wisconsin case, supra*, it is said:

"This court has recently had occasion to construe the Transportation Act. In Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563, 66 L. ed. 371, 22 A. L. R. 1086, 42 Sup. Ct. Rep. 232, it was held that the act, in seeking to render the interstate commerce railway system adequate to the country's needs, had, by Sections 418 and 422, conferred on the Commission *valid power and duty to raise the level of intrastate rates when it found that they were so low as to discriminate against interstate commerce and unduly to burden it.*" (Italics supplied.)

The Court then refers to its decision in the *New England Divisions case, Akron, C. & Y. R. Co. v. U. S.*, 261 U. S. 184, in regard to divisions of joint rates, and then, in emphasizing the importance of the new features of the Transportation Act, said:

> "In both cases it was pointed out that the Transportation Act adds a new and important object to previous interstate commerce legislation, which was designed primarily to prevent unreasonable or discriminatory rates against persons and localities. The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and, in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged.
>
> "It was insisted in the two cases referred to, and it is insisted here, that the power to regulate interstate commerce is limited to the fixing of reasonable rates and the prevention of those which are discriminatory, and that, when these objects are attained, the power of regulation is exhausted. This is too narrow a view of the commerce clause. To regulate in the sense intended is to foster, protect, and control the commerce with appropriate regard to the welfare of those who are immedi-

ately concerned, as well as the public at large, and to promote its growth and insure its safety."

And in the same case (263 U. S. at page 483, 68 L. ed. at page 400) the Court said:

> "Reliance is also had on decisions of this court in cases where the question was of the reasonableness of state rates, and it was held that evidence to show that the revenue of the carrier from both state and interstate commerce gave a fair profit was not relevant. The state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, and, on the other hand, the carrier cannot justify unreasonably high rates on domestic business on the ground that only in that way is it able to meet losses on its interstate business. Minnesota Rate Cases (Simpson v. Shepard), 230 U. S. 352, 436, 57 L. ed. 1511, 1556, 48 L. R. A. (N. S.), 1151, 33, Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18; Smyth v. Ames, 169 U. S. 466, 541, 42 L. ed. 819, 847, 18 Sup. Ct. Rep. 418."

It must be remembered that the Commission found as a fact in these consolidated proceedings that the maintenance of the lower intrastate rates in Alabama prescribed by the Alabama Commission, as contrasted with the level of rates which the Interstate Commission found reasonable and the scale which it promulgated to govern the rates throughout southern territory, would create the undue prejudice and unjust discrimination against interstate shippers and localities and the undue burden and unjust discrimination against interstate commerce forbidden and declared to be unlawful by Sections 3 and 13 of the Interstate Commerce Act. Its specific finding on this point is made at page 435

of its original report (113 I. C. C. at page 435, R. 110). That finding is as follows:

> "That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce."

We have, then, a specific finding that the lower Alabama intrastate rates will result (1) in *unjust discrimination against interstate commerce* and (2) in undue prejudice to persons and localities in interstate commerce.

We have just seen what this Court said in the *Wisconsin case*, concerning discrimination against interstate commerce and the dovetail relation between the provisions of Section 13, paragraph 4, of the Interstate Commerce Act, forbidding such discrimination, and Section 15a of the same Act. It was contended by the Alabama Commission in the proceedings before the Commission that the scale which it promulgated for application in Alabama should be used as the standard not only for Alabama intrastate rates, but also to fix the measure of rates throughout southern territory. The Alabama intrastate scale was the lowest scale on fertilizer ever prescribed either by the Interstate Commission or any State Commission and made effective in Southern territory, with the sole exception, perhaps, of certain intrastate rates in Mississippi (R. 706). The carriers had proposed a higher scale, based on rates finally prescribed by the Commission in the *Royster cases*, for application from Norfolk to points

in Carolina territory. (See report of the Commission, 133 I. C. C., at pages 391, 392, and 394) The Royster scale proposed by the carriers was prescribed in *Royster Guano Company v. A. C. L. R. R. Co.*, 50 I. C. C. 34.

Concerning the Royster scale the Commission said in its report (113 I. C. C. at page 396, R. 42):

> "The Royster scale is proposed for uniform application by the carriers because it has been prescribed in two subsequent cases, namely, *Freight Adjustment Steering Committee v. A. C. L. R. R. Co.*, 53 I. C. C. 506, decided June 9, 1919, and *Goldsboro Chamber of Commerce v. A. C. L. R. R. Co.*, 91 I. C. C. 315, decided July 10, 1924, and because rates as high as or higher than that scale have been prescribed or approved in still other cases. It is, therefore, considered that this scale has been impressed with our sanction."

On the other hand, the shippers and manufacturers advocated the adoption for uniform application throughout southern territory of a scale which was the Alabama scale, that being, as stated, the lowest scale, with perhaps one exception, in effect in southern territory. In its report the Commission said, in part, concerning the shippers' proposal (113 I. C. C. 403, R. 55, 56):

> "The shippers' case was presented largely by representatives of manufacturing organizations, members of the National Fertilizer Association. The Alabama Public Service Commission also took an active and important part in support of the rates proposed. Testimony was offered on behalf of the Kentucky Railroad Commission, a statement was made by one of the North Caro-

> lina commissioners, and helpful cross-examination was conducted by representatives of the Florida, Georgia, and Mississippi commissions. *The shippers are at one with the carriers in urging uniformity in the rates; the predominant issue is with respect to their level.*" (Italics supplied.)

The Commission then refers to its decision in the *Blackshear case*, 87 I. C. C. 654, and the contention made by the shippers that the Commission had therein disregarded the Royster scale. It also refers at some length to the scale prescribed by the Alabama Commission which was urged by the shippers for adoption in this preceeding, that scale being shown in its entirety in Appendix C to the report in 113 I. C. C. 389, at page 443 (R. 112, 113), where the shippers' proposed scale (the Alabama scale) is compared with the carriers' proposed scale and with the Memphis-Southwestern scale. The Commission points out at page 404 that the shippers advocate strict adherence to the distance principle and the observance of the distance scale, modified in its application to provide for very limited groupings so as to preserve industrial districts or groups, such as the Atlanta district, the Birmingham district, etc. (R. 57,58.) At page 405 of the report of the Commission it is said:

> "One of the shippers' principal witnesses admitted that the rates which they propose are, with the exception of rates within Mississippi and for short distances in Georgia, lower than any existing fertilizer rates in southern territory that have been prescribed either by us or by State commissions." (R. 58)

And then, at page 406, after having reviewed the contention of the shippers in regard to the method by

which the Alabama scale was derived, the Commission further said concerning the origin of this scale (R. 59):

> "The carriers contend that the Alabama scale, the basis of the shippers' proposed rates, is unduly low and was influenced by intrastate rates fixed by the Georgia commission. In 1907 the Alabama Legislature passed a statute which, it is said, prescribed the same distance scale of rates on fertilizer as was then in effect in Georgia. This action, the carriers say, was taken without any public hearing and resulted in substantial reductions. The scale so prescribed, subject to the subsequent general rate changes, remained in effect until July 25, 1924, when the *Alabama commission promulgated the present intrastate scale, resulting in a further average reduction of about 7 per cent.*" (Italics supplied.)

At pages 406-7 of its report the Commission made this further statement concerning the position of the shippers who were advocating the Alabama Commission's scale, admittedly the lowest scale in the South (R. 60):

> "As the position of the shippers is understood, not so much stress is laid on rate comparisons to sustain their scale as on the economic advantages accruing through the use of fertilizer, and the absolute need for its use if southern agriculture is to be at all successful."

After reviewing the economic considerations stressed by shippers, the amount of fertilizer used throughout southern territory, as contrasted with the tonnage used in the southwestern states, and after having given consideration to and having analyzed the voluminous evidence submitted by the interested parties, including the

results of the traffic test made, the Commission then proceeded at pages 416-427 of its report (113 I. C. C. 389; (R. 71-86) to discuss the rate level for the future, and in so doing it made a comprehensive statement of the salient points made by the carriers and shippers in regard to the scales proposed by them, respectively, and made brief comments thereon in regard to these contentions; and it found that the record supported one uniform level of rates throughout southern territory on this traffic.

At page 422, in emphasizing that there was no dissent from the proposition that a uniform level of fertilizer rates is desirable throughout southern territory, and in finding that the evidence sustained the adoption of one uniform level, the Commission said (R. 80):

> "Carriers and shippers agree, with a single exception that a uniform level of fertilizer rates is desirable throughout all of southern territory. The single exception is the Florida East Coast, which desires a somewhat higher level to and from points in the Florida peninsula. *Considering all the circumstances surrounding this particular form of traffic and the general agreement upon this point, resulting in a paucity of evidence to the contrary, we think that the record supports one uniform level.*" (Italics supplied.)

It then proceeded to promulgate and fix what it considered to be, using its informed judgment and the facts developed by the record, the reasonable level of fertilizer rates to be thereafter observed for both interstate and intrastate application.

It must be borne in mind that throughout the proceeding it had been conceded by all parties of record,

as the Commission points out, that one uniform level should prevail, that one scale should be promulgated to govern the rates, both interstate and intrastate, and that the difference between the parties, consisting of the railroads on the one side and the state commissions, shippers' organizations and representatives on the other, concerned principally the rate level to be observed in the future. That level has now been fixed by the Commission. The scale to be used in revising the rates has been prescribed by it, and that finding and its order promulgating the scale so prescribed is not attacked, and cannot be attacked since it was made upon an ample record and after a comprehensive analysis of the evidence and findings concerning the facts established thereby; it is binding upon the carriers and shippers alike, although they might have entertained different views as to the rate level which should have prevailed. In fixing the rate level, the Commission states that it had in mind the requirements of the Hoch-Smith Resolution and the redistribution of the so-called transportation burden thereby and therein required. It states at page 421 of its report that upon sound economic grounds fertilizer is a commodity (R. 78):

> "Which should be leniently treated in distributing the burden of freight transportation. The need for continued progress in the use of fertilizer is so great and the degree of its use, as this record clearly shows, is so dependent upon financial considerations that all burdens associated with its use should be made as light as possible."

With these considerations in mind, the report clearly indicates that the Commission promulgated a scale which would give effect to those economic considera-

tions and would bear as lightly as possible upon the fertilizer traffic, having regard to other requirements of the law under which it was functioning as to the maintenance of an adequate transportation system, and that other commodities or branches of traffic must not be unduly burdened.

We have the fact conceded, then, by all parties, that there should be one uniform level of rates on fertilizer and fertilizer materials throughout southern territory, and the positive finding of the Commission that the record justifies the conclusion that a uniform scale should apply to determine the rate level. That scale, as stated, has been fixed by the Commission. *It was fixed on the assumption and with the understanding and the positive expectation that the intrastate rates and the interstate rates should be harmonized and made uniform by the use of the standard of reasonableness represented by the scale prescribed by the Commission.*

The revenue test made by the carriers, under the direction of the Commission and at its request, included the tonnage and revenue derived from this traffic moving intrastate as well as interstate throughout the South. In reaching a rate level, and in fixing the scale promulgated by the Commission, this test was used and the conclusions in regard thereto arrived at in the report were based upon the assumption that the intrastate rates would be placed upon the same level as the interstate rates, and that uniform level is reflected in the scale prescribed. (Note, in this connection, what the Commission said in its report concerning the revenue test, at pages 413-415.) (R. 69-73.)

It was shown by that test that of the total tonnage

of fertilizer and fertilizer materials, 70 per cent was intrastate traffic. The Commission said, 113 I. C. C., at page 397 (R. 43):

> "About 70 per cent of the tonnage of fertilizer and fertilizer materials moving in southern territory is intrastate traffic * * * ".

At page 414 of the same report, it found that out of the total revenue of $7,947,908 received from the transportation of fertilizer and fertilizer materials during the *two-months period* covered by the test, almost 60 per cent, or $4,753,932, accrued on intrastate traffic. (R. 69, 70) The Commission's report further shows that if the Alabama intrastate scale were adopted as the measure to fix the level of rates throughout the territory, the *revenue* of the carriers would be reduced approximately $1,272,000 on an annual basis, (113 I. C. C. 415, R. 71) and that the records so show was admitted by the Alabama Public Service Commission in its petition for rehearing, dated October 30, 1926, and filed before the Commission in said consolidated proceeding known as Docket No. 16295 and Docket No. 16336. (R. 1034, 1035.)

The Commission said that the scale which it prescribed to govern the interstate level, if applied to both interstate and intrastate tonnage of fertilizer and fertilizer materials, moving throughout southern territory, would about preserve the carriers' existing revenues. Bearing in mind that the shippers and carriers agreed that a uniform level of fertilizer rates should be established throughout all of southern territory; that the Commission found that the record supported one uniform level, and fixed a level to control the rates for the future which would substantially preserve the

carriers' then existing revenues from the traffic, if applied upon both interstate and intrastate traffic, it is apparent that the Alabama Commission, being disappointed in its expectation that its contention and its scale would prevail, is seeking to maintain in Alabama a level of rates substantially lower than that which the Interstate Commission, in the consolidated proceedings, fixed to govern the rates throughout southern territory, both interstate and intrastate, and upon the assumption that the rates so promulgated would apply to both classes of traffic. Had it been applied only to interstate traffic, the revenue test shows that the carriers' revenues would have been materially reduced. The Commission found, 113 I. C. C., at page 419, (R. 76) that—

> "In his proposed report the examiner recommended a scale somewhat higher than the shippers' scale and somewhat lower than the carriers'. Upon argument the carriers conceded that the scale so recommended would about maintain their aggregate revenues. But our decision can not properly be predicated solely upon an attempt to average existing rates and maintain revenues."

In the petition for rehearing filed by the Alabama Commission in said consolidated proceedings, it was conceded by that tribunal that the rates which the Commission had prescribed on fertilizer and fertilizer materials were apparently designed to preserve aggregate revenues of the carriers from this traffic. It is then urged in the petition of the Alabama Commission that the Interstate Commission should have given greater consideration to the provisions of the Hoch-Smith Resolution.

It cannot be successfully contended that the Interstate Commission did not give full consideration to the provisions of that part of the Interstate Commerce Act, for it said, 113 I. C. C. 419 (R. 76, 77)—

> "The traffic test furnishes evidence as to the level of existing rates, both interstate and intrastate on fertilizer in southern territory; but while this evidence is entitled to weight in arriving at maximum reasonable rates it is not controlling.
>
> "The doctrine that the burden of rail transportation should be distributed among the various kinds of freight with some regard for the economic needs of the country has always had recognition, in one way or another, in the rate structure. The familiar principle of 'charging what the traffic will bear' or, as some prefer to put it, of 'not charging what the traffic will not bear,' has no doubt had that result in some degree. The principle which has been quite generally recognized in public regulation, that the value as well as the cost of service is a factor entering into the determination of just and reasonable rates, has had a similar result. In another form the same thought seems to be predominant in the Hoch-Smith resolution. But the inevitable result of such a distribution of the transportation burden must be that some kinds of freight traffic, under just and reasonable rates, will earn materially less for the carriers than others."

The Commission then pointed out (R. 77) that—

> "There are manifest limitations to the doctrine. It may be conceded that we have no power to fix rates upon any kind of freight which will fail to produce some margin over operating cost."

Then, after considering the contention of the carriers, it is said, at page 421 of its report (R. 78):

"It may be that such a change in the level of fertilizer rates, up or down, as could reasonably be considered would in itself have comparatively slight effect upon the financia. status of the southern farmer. But that does not alter the fact that upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. The need for continued progress in the use of fertilizer is so great and the degree of its use, as this record clearly shows, is so dependent upon financial considerations that all burdens associated with its use should be made as light as possible."

With these considerations in mind, as has been pointed out above, the Commission fixed a scale to determine the level of rates and in so doing, to use its own language, it dealt leniently with this traffic and so adjusted the rates and the level of its scale as to make what it deemed to be a rate level which would respond to those considerations and make the costs of transportation as light as possible, having regard to its other duties and responsibilities under the Interstate Commerce Act. It thereupon fixed a scale which was materially less than the level of rates which it had theretofore approved in the series of *Royster cases* and in other cases cited in its report, for application upon fertilizer and fertilizer materials in the Carolinas, and in certain other sections of southern territory. It declined to adopt a level as low as the shippers advocated which, as has been repeatedly stated, was the scale promulgated by the Alabama Commission, but said, at page 424 (R. 82) of its report:

"Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light

> of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, *and having in mind the principles which we believe should be applied in distributing the burden of rail transportation* and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted." (Italics supplied.)

This scale was to control and fix the rate level not only upon interstate traffic, but also upon intrastate traffic. The fact that intrastate rates were lower than interstate rates in many sections of Southern territory, including the State of Alabama, cannot in any way militate against the findings of the Commission as to the level of this scale, in as much as the elimination of the differences in the rates levels not only interstate, but intrastate, were among the objects sought to be accomplished by this General Investigation, and the different rate levels, whether interstate or intrastate, were to be reconciled and one uniform level established, according to the concessions made by all parties and according to the finding by the Commission that the record justified and required one uniform rate level throughout southern territory.

While we have discussed, at the risk of tediousness, the purposes sought to be accomplished by this General Investigation, our excuse for the extent to which the Commission's findings have been dwelt upon is that we desire to impress the salient points considered by the Commission in fixing the standard to be used in bringing about what it found to be necessary, namely a uniform level of freight rates on fertilizer and fertilizer

materials to be applied uniformly throughout southern territory upon not only interstate, but intrastate traffic, so adjusted as to give recognition to all of the economic considerations urged and to all of the requirements of the Hoch-Smith resolution, as well as other provisions of the law under which it functions, and to eliminate the undue burden upon and unjust discrimination against interstate commerce brought about by the *lower intrastate rates*, and the undue prejudice and unjust discrimination against persons and localities served in interstate commerce.

The record presented not merely a Section 3 case, or a question of discrimination against persons or localities, as appellants contend, but it went far beyond that, as the foregoing quotations from the findings and report of the Commission will show. It dealt with the field of interstate commerce as a whole, so far as this branch of traffic is concerned, the various disparities and differences in the level not only of the interstate rates, but of the intrastate rates on this traffic throughout southern territory, the necessity for removing these disparities and avoiding placing an undue burden upon and continuing the unjust discrimination against interstate commerce; and the establishment for the future of a standard which could be used for interstate rates as well as for intrastate rates, which latter had been brought directly before the commission.

It will not do to argue, as the appellants do that the State Commission of Alabama can impose a lower scale for intrastate application and can require the maintenance of a lower level of rates intrastate in Alabama than the Interstate Commission has found to be reasonable and has ordered applied. If that doctrine were once recognized, it could be fol-

lowed by the State of Georgia, if the Georgia Commission saw fit,—as it has not done—to decline to follow the standard fixed by the Commission and should order the lower intrastate rates for application in Georgia. If the intrastate rates on the other side of the state line were thus made lower than the corresponding interstate rates, it requires no argument to show that the interstate adjustment must inevitably be broken down and controlled by the lower intrastate rates in Georgia, on the one hand, and in Alabama on the other, if the states were permitted to disregard the level fixed by the Commission.

However, if Alabama is to be permitted to maintain rates upon a lower level than the prescribed interstate adjustment, the same privilege would have to be accorded other states, and the record clearly indicates that uniformity of rate levels is the only solution for these difficulties which would arise if the states, by successful independent actions, were left free to do what the Alabama Commission here contends it should be permitted to do, namely, to ignore the scale of rates promulgated by the Interstate Commission under the circumstances aforesaid, and substitute its own independent judgment, and the lower level of rates, for the judgment of the Interstate Commission and the level of rates which it has prescribed with all the light before it thrown upon the problem by this comprehensive proceeding, embracing as it does the whole of southern territory, and presenting the views of all interested parties, including the Alabama Public Service Commission, which was heard at length upon and concerning the scale it advocated and its reasons for promulgating and advocating the same.

The point is that there is a very real question of

revenue burden and discrimination against interstate commerce involved, should the contention of the appellants be recognized and the states be left free to depart at will from the level of rates promulgated by the Commission and which the carriers must apply, under its orders. This Court has said that the effective operation of the Act reasonably and justly requires that the intrastate traffic should pay its fair share, and that the Commission cannot discharge the large and important duties imposed upon it unless compensation is received for the intrastate business comparable with that which it authorizes for the interstate business, and further, that state authorities may deal with intrastate rates only "on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce."

3.

The Contentions of Appellants Ignore the Proceedings in the General Investigation of Fertilizer Rates, Docket 16295, and Proceed Upon the Erroneous Assumption that Docket 16336 is to be Separately Considered, and Upon the Further Erroneous Assumption That Under That Docket There was Involved Only a Question of Section 3.

Aside from the contention in regard to the alleged lack of a further hearing before the order attacked by appellants, being the order of October 3, 1927, as supplemented by order of December 22, 1927 (R. 24-25; 225) was entered, the contention of appellants is that the investigation ordered by the Commission in regard to Alabama intrastate rates in Docket 16336 concerned discrimination against persons and localities under

Section 3 of the Act alone, and that the evidence, while showing a discrimination in some instances, was not sufficient to justify the sweep of a state-wide order.

This theory takes too narrow a view of the investigation ordered by the Commission in Docket 16336, which was heard along with the General Investigation, and ignores the very terms of the order inaugurating the investigation in Docket No. 16336. Upon reference to that order (R. 206-207) it will be noted that all railroads subject to the jurisdiction of the Commission operating within the State of Alabama were made respondents; that notice was directed to be served on the State of Alabama in the manner indicated, as well as on the Alabama Public Service Commission, and that the scope of the investigation was not limited to any inquiry in regard to the discrimination against persons or localities, but it likewise embraced an investigation as to whether the lower intrastate rates in Alabama constituted any undue, unreasonable, or unjust discrimination "against interstate or foreign commerce." This investigation so ordered was set for hearing and was heard with the General Fertilizer Investigation which had for its purpose the fixing of a rate level to be observed throughout southern territory, taking into consideration the revenues resulting therefrom, the tonnage moving, including both interstate and intrastate, and as a result of said consolidated proceedings the rate level, and the scale to be used in maintaining that level, were fixed and determined by the Interstate Commerce Commission. It determined that the rates which the Alabama Commission had promulgated for intrastate application in Alabama would not only discriminate under Section 3 against persons and localities, but that they would likewise discriminate

against interstate commerce and constitute a revenue burden upon interstate commerce, all of which was prohibited and declared to be unlawful by the provisions of paragraph 4 of Section 13.

The situation cannot be viewed solely from a Section 3 standpoint, as appellants have attempted to do. They overlook the scope of the General Investigation in Docket No. 16295, as well as the scope of the investigation in Docket No. 16336, heard therewith and as a part thereof.

Paragraph 4 of Section 13 of the Interstate Commerce Act, as amended by the Transportation Act, 1920, provides as follows, (41 Stat. L. 484; Fed. Stat. Ann. 1920, Supp. page 106):

> "Whenever in any such investigation the Commission after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Concerning paragraph 4 of Section 13, which has just been quoted, this court said, in the *Wisconsin case*, (66 L. Ed. at p. 382):

> "When we turn to paragraph 4, Section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail relation between that provision and the purpose of Section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, and unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words."

It will be noted that under said paragraph 4 of Section 13 of the Interstate Commerce Act, as amended, the Commission, after instituting such an investigation as is contemplated by paragraph 3 of Section 13, or whenever in any investigation under other provisions of the Act the Commission finds, after full hearing, that the intrastate rates "cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in interstate commerce, on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," which is thereby forbidden and declared to be unlawful, it is commanded, then and in that event, to prescribe the rates, or the maximum or minimum, or maximum and minimum, thereafter to be charged. And the section then commands and requires that such rates shall be observed while in effect by the carriers parties to such investigation affected thereby—

"the law of any State or the decision or order of any State authority to the contrary notwithstanding."

The Commission, having found the unjust discrimination and the undue prejudice condemned by the Act to exist and to be brought about by the intrastate rates called in to question, is required to remove the discrimination and not only that, but to direct how it shall be removed and to prescribe the rates to be thereafter observed for the future, the law of any State or the order of any State commission to the contrary notwithstanding.

The contention of appellants completely ignores this requirement of the law and the duty thereby imposed upon the Interstate Commission. It likewise ignores the fact that the Commission not only found an unjust discrimination against persons and localities served in interstate commerce, but it found an unjust discrimination against interstate commerce itself brought about by the maintenance of the lower rates prescribed by the Alabama Commission.

It will not do, therefore, to argue, as appellants do, that the case was purely one under Section 3, and what was said by this Court in the *Wisconsin case* with regard to the sweep of an order based solely on a violation of Section 3 can have no application here. It should be noted, however, in passing, that even if the case were based on Section 3 alone, and the investigation included only unjust discrimination against persons and localities, the evidence is very full and complete to sustain the proposition not only that there is such discrimination, but that to remove it effectively it would be necessary to revise the entire body of intrastate rates in Alabama due to the conflict between

the intra and interstate rates and the competition brought about by shipments from numerous intrastate plants and interstate plants and the inextricable difficulties and hardships which would arise were the intrastate plants, located at numerous points within the State of Alabama, permitted to continue to ship on the lower level of intrastate rates against the numerous interstate plants shipping, or attempting to ship, into Alabama in competition with the local plants. We shall later refer to this evidence in some detail.

But we have presented a case of much broader scope, and one which concerns not only the discrimination against persons and localities forbidden by Section 3, but the discrimination against interstate commerce forbidden by paragraph 4 of Section 13, and the inevitable effect of the lower intrastate rates upon the revenues of the carriers, if it be once conceded or recognized that state commissions can depart at will from the level of interstate rates fixed and prescribed by the Commission in the General Investigation and thus either compel an increase in the *interstate rates* to make up the loss sustained by the lowering of the *intrastate rates*, or the loss must be made up by increasing interstate rates on other commodities.

We have the fact that the Alabama intrastate rates, if applied throughout the territory, would mean a loss in net revenue to the carriers of at least $1,250,000 annually (R. 71), as compared with their present revenues from this traffic. The Commission found and held that the scale which it prescribed, if applied to both intrastate and interstate shipments of fertilizer and fertilizer materials, would about balance the existing revenues of the carriers, thereby lowering very generally the interstate level and increasing in some states

the intrastate rates so as to bring the rates into harmony, using the level and yardstick prescribed by the Commission. If one state could depart from that level and make lower intrastate rates, other states may make even more serious departures, thereby further depleting the carriers' revenues; but we have it established of record that the extent to which the Alabama Commission has gone, and the rates which it advocates, if applied throughout the territory to both interstate and intrastate traffic, would result in a loss of at least $1,250,000 annually. (R. 71.)

It has been decided by the Commission that one level must prevail. It has been decided by that tribunal that the Alabama rates are too low for application or adoption, and are less than it can lawfully prescribe or require the carriers to operate. We are, therefore, confronted squarely with the question whether the Alabama intrastate level, or a lower level if certain states should think fit to promulgate the same, shall prevail for intrastate traffic, in disregard of the rate level and revenue requirements as fixed and ascertained by the Commission. Bear in mind that that tribunal is the instrument created by Congress to carry out the provisions of the Interstate Commerce Act. It can not discharge its functions or fulfill its duties in regard to the fixation and maintenance of rate levels and revenue returns required by the Act, nor can it control or exercise the initiative necessary to bring about such a distribution of the transportation burden as is contemplated by the Hoch-Smith resolution, when read in the light of the other provisions of the Interstate Commerce Act, as amended, if its efforts so to do and its orders and requirements can be departed from and disregarded by state commissions throughout

southern territory. As this Court said in the *Wisconsin case, supra*, 66 L. Ed., at page 383:

> "Effective control of the one must embrace some control over the other, in view of the blending of both in actual operation."

And again, at page 384:

> "Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonably compensatory return for all the work it does. The states are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which would burden it *unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business.* Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear (citing cases). In such development, it can impose any reasonable condition on a state's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field." (Italics supplied.)

Significant also is the statement, in the same opinion, 66 L. Ed., at page 384, that state authorities must deal with intrastate rates *"as between themselves on the general level which the Interstate Commerce Commission has found to be fair for interstate commerce,"* and the further statement that:—

> "So, too, in practice, when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid Federal order as to the intrastate rates * * *."

Fertilizer tonnage, and materials used in the manufacture of fertilizer, constitute a considerable portion of the tonnage of the carriers. (113 I. C. C. at p. 393, R. 37-38.) That branch of traffic must contribute its fair share of transportation revenues. What that contribution shall be in the distribution of the so-called transportation burden is confided to the Commission in that, under Section 15a, it must initiate and permit the establishment of rates upon all traffic which will yield, in the aggregate, the prescribed return. It has given consideration to the requirements of the Hoch-Smith resolution in the General Investigation which it had conducted and so states in its report. It has dealt leniently with this particular branch of traffic, and has made the transportation charges therefor as light as it thinks it can consistently do, having in mind the volume of the tonnage, the economic considerations mentioned in its report, the distribution of the traffic, its relation in volume and tonnage to other traffic, and the proportion which moves single line, as well as in interline service, and the proportion handled in intrastate commerce and interstate commerce, respectively; all of which will appear from its report in its General Investigation, 113 I. C. C., 389. (R. 33-131.)

Having discharged to the best of its ability, in the light of its informed judgment, the responsibilities and

duties placed upon it in this regard, all that it has sought to accomplish with respect to the uniform system of rates on this traffic, to be applied throughout southern territory, will be frustrated and destroyed if it be once recognized and declared that state commissions shall be free to maintain lower rates on this traffic and to disregard the standard set by the Commission whenever the state commissions shall think proper so to do. If that can be done, and the findings and orders of the Commission disregarded in the case of fertilizers and fertilizer materials, what will be the effect in regard to revisions of rates on other commodities? How shall the Commission accomplish the important purposes sought to be attained by the Interstate Commerce Act, as amended by the Transportation Act, if these departures from the interstate level are to be freely permitted in the discretion of state commissions? And how can the chief purposes of the Transportation Act be attained if we ignore the destructive effect upon revenues of successive reductions in rates by state authorities, thus disregarding the standard fixed by the Commission?

Concerning the necessity for obviating this destructive effect upon the interstate revenues, and pointing out that to achieve the paramount purposes of the Transportation Act it was necessary to incorporate such a provision as that found in Paragraph 4 of Section 13, this Court said, in the *Wisconsin case*, 66 L. Ed., at page 383:

> "But, here, the general words are used after discrimination against persons and localities has been specifically mentioned. The natural inference is that, even if they include what has gone before, they mean something more. When we find

> that they aptly include a kind of discrimination against interstate commerce which the operation of the new act for the first time makes important, and which would seriously obstruct its chief purpose, we cannot ignore their necessary effect."

And again, in the same opinion, at page 382, it was said concerning disparities between intrastate rates and revenues and those in the interstate branch of the service:

> "If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system."

After pointing out that Section 15a, by its terms, conferred no direct power on the Commission to deal with the intrastate rates, and that what is done under that section is to be done "in the exercise of its powers to prescribe just and reasonable rates," the Court then said:

> "When we turn to paragraph 4, Sections 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonale, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail relation between that provision and the purpose of Section 15a. *If that purpose is interfered with by a disparity*

of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, and unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words.'' (Italics supplied.)

The Commission has found that the maintenance of the lower Alabama intrastate rates will constitute not only an unjust discrimination and undue prejudice against localities served in interstate commerce, but that it will constitute, and does constitute, an undue, unreasonable and unjust discrimination against interstate commerce itself. (R. 101.) It has ordered the discrimination removed and, as required by paragraph 4 of Section 13, it has prescribed the method to be used in removing the discrimination and the rates thereafter to be observed. Those rates have been ordered by it to be placed on the level prescribed by it for application throughout southern territory, having regard to both interstate and intrastate tonnage of fertilizer and fertilizer materials moving within that territory. (R. 101, 24, 25, 225.)

4.

The Commission's Finding of Unjust Discrimination and Undue Prejudice to Persons and Localities in Interstate Commerce, and Against Interstate Commerce Caused by the Maintenance of the Lower Alabama Intrastate Rates, is Based on Substantial Evidence and Supported by the Evidence of Record.

The Commission had before it in Docket 16295, the *General Fertilizer Investigation*, the question of the

general basis of rates on fertilizer and fertilizer materials in southern territory and the scale to be prescribed for uniform application over the standard lines between points in that territory. After taking evidence at three separate hearings and affording opportunities to be heard to all parties in interest, including the State of Alabama and the Alabama Public Service Commission, and after an exhaustive investigation concerning the proper level of rates to be applied, we have seen that the Commission found and held that, in view of the characteristics of this traffic, it was reasonably entitled to a relatively low basis of rates, and that it fixed a distance scale, which was prescribed for uniform application throughout southern territory, with the expectation and understanding that it would be applied upon both interstate and intrastate traffic. The level of the scale was determined, not solely with regard to interstate traffic, but having regard to the traffic as a whole, the tonnage movement, and the revenue derived therefrom under existing rates.

We have seen that the Commission found that its scale, so promulgated, if applied uniformly within southern territory upon both interstate and intrastate traffic, would about preserve the level of the carriers' revenues under the then existing (but varying) rate levels. It can not be contended, and is not contended, that these findings of the Commission, and the mandate of its order fixing the rate level and prescribing the scale to govern, were not supported by ample evidence of record. There is no attack by appellants upon the order in the *General Investigation*, Docket No. 16295, fixing the rate level and prescribing the scale, or upon the supplemental orders determining the mat-

ter of fourth-section relief and of minor group adjustments. That phase of the investigation, and those findings and orders, are in no way questioned by appellants. Their main contentions seem to be: (1) That the finding of undue discrimination is not supported by substantial evidence, and (2) That the Alabama Public Service Commission has not been accorded a hearing.

That there was ample evidence before the Commission in these consolidated proceedings to justify its findings of unjust discrimination and undue prejudice brought about by Alabama intrastate rates which were generally lower than the interstate level can not be successfully denied. We will briefly review some of this evidence.

Exhibit No. 46, introduced before the Commission and reproduced as Appendix A* to this brief, shows the location of fertilizer plants in Southern territory. It will be observed, upon reference to this exhibit, that there are numerous plants located in Georgia, Tennessee, Mississippi and Florida contiguous to the State of Alabama.

There is a heavy movement of fertilizers and fertilizer materials from interstate points of origin to destinations in the State of Alabama. The following statement, reproduced from Statement D of Exhibit No. 492, filed before the Commission, shows the state and interstate movements to Alabama destinations during March and April, 1925, the period covered by the revenue test, which the carriers made at the direction of the Commission:

*This exhibit is not in the printed record, but is reproduced here in accordance with the stipulation of the parties. (R. 1013.) Portions of exhibits not in the printed record which may be reproduced at interpoints herein are likewise reproduced in accordance with the stipulation referred to.

Destined to		Number of Cars	Weight Tons
Alabama	Intrastate	8,621	242,465.44
	Interstate	3,976	103,441.18

It will be observed that during this two months period 12,597 carloads of fertilizers and fertilizer materials moved to destinations in Alabama. Of this number 3,967 carloads moved from *interstate* points of origin. The movement from interstate origins to Alabama during this two months' period aggregated 103,500 tons. In as much as the movement for this two months' period represents approximately one-half of the annual movement (R. 69) it is obvious that the annual movement of fertilizer from *interstate* points to Alabama destinations aggregates approximately 7,952 carloads.

Witness Drescher, Assistant to the Vice President in charge of traffic of the Louisville & Nashville Railroad, was the principal witness for the carriers with respect to the discrimination in favor of Alabama shippers and localities against interstate shippers and localities and testified at length concerning the Alabama intrastate rates as compared with the rates from manufacturing and shipping points in adjacent States. (R. 441-482.) He introduced numerous exhibits showing rates, distances, and movement of traffic from Alabama points as compared with interstate points and pointed out the discrimination against interstate shippers. (R. 602.) In selecting points in other States from which he compared the rates with the Alabama intrastate rates he undertook to use fertilizer manufacturing points which sold their products in Alabama in competition with Alabama fertilizer manufacturers. (R. 453.)

Mr. Drescher compared the rates from Birmingham, Alabama, and Nashville, Tennessee, to Alabama points on the Louisville & Nashville Railroad between Birmingham and Nashville; the rates from Decatur, Ala., and Chattanooga, Tenn., to intermediate Alabama points on the line of the Southern Railway; the rates from Birmingham, Alabama, and Rome, Georgia to intermediate Alabama points on the Southern Railway; the rates from Birmingham, Alabama, with the rates from Columbus, Georgia, to intermediate Alabama points on the Central of Georgia Railway; the rates from Birmingham with the rates from Atlanta, Georgia, to intermediate Alabama points on the Southern Railway; the rates from Montgomery, Alabama, with the rates from Richland, Georgia, to intermediate points on the Seaboard Air Line Railway; the rates from Montgomery, Alabama, with the rates from Columbus, Georgia, to intermediate points on the Central of Georgia Railway; the rates from Decatur, Alabama, with the rates from Corinth, Miss., to intermediate points on the Southern Railway; the rates from Birmingham, Ala., with the rates from Tupelo, Miss., to intermediate points on the St. Louis-San Francisco Railway; the rates from Mobile, Ala., with the rates from Pensacola, Florida, to stations on the Louisville & Nashville Railroad between Flomaton, Ala., and Montgomery, Alabama; the rates from Eufala, Ala., with the rates from Columbus, Ga., to stations on the Central of Georgia Railway in Alabama, and the rates from Birmingham, Ala., with the rates from Meridian, Miss., to intermediate Alabama points on the line of the Alabama Great Southern Railroad. (R. 452-462.)

Obviously we can not reproduce all of the exhibits filed by Mr. Drescher illustrating this discrimination

against interstate localities and shippers. We will, however, reproduce as Appendix B to this brief, his Exhibit No. 291 filed before the Commission, which is illustrative of the discriminatory situation.

Birmingham, Alabama, and Nashville, Tennessee, are both located on the main line of the Louisville & Nashville Railroad. Fertilizers are consumed at Alabama points between Birmingham and Nashville and both Birmingham and Nashville manufacturers undertake to distribute their products at these intermediate stations. Exhibit No. 291 shows the distances from Birmingham and Nashville to intermediate Alabama stations, the rates at the time of the hearing before the Commission from both Birmingham and Nashville, and also the movement of fertilizer to these stations from Birmingham and Nashville for the months of March and April, 1925. The exhibit also shows that Nashville manufacturers of fertilizers sell their product at stations on this line as far south as Boyles, Alabama, which is only 3 miles north of Birmingham.

The discrimination which existed against Nashville in favor of Birmingham and in favor of intrastate traffic against interstate traffic is apparent from the exhibit. For example, Athens, Ala., is 98 miles from Birmingham and 107 miles from Nashville. At the time of the hearing the rate on fertilizer, in carloads, from Birmingham to Athens was $1.95 per ton and from Nashville to Athens it was $2.59 per ton. At Elkmont, Alabama, 107 miles from Birmingham and only 98 miles from Nashville the rate from Birmingham was $2.05 per ton while the rate from Nashville was $2.59 per ton.

These are typical examples of the discrimination against interstate commerce and interstate traffic

which the Commission ordered removed. Such discrimination existed not only against Nashville and manufacturers located at Nashville in favor of Birmingham and manufacturers located at the latter point, but also against various interstate points including Atlanta, Rome, Columbus and Richland, Georgia, Pensacola, Florida, Corinth and Meridian, Miss., and manufacturers located at such points.

The movement from interstate origins to Alabama destinations is by no means limited to short hauls from points in adjacent States near the Alabama State line. For example, Exhibit No. 288, submitted before the Commission, shows the total movement and the points of origin of all shipments of fertilizer to destinations in the State of Alabama located on the Alabama, Tennessee & Northern Railroad for the first four months of 1925. This exhibit is, in part, as follows:

Point of Origin		Number of Carloads
Mobile,	Ala.	42
Montgomery,	Ala.	36
East Point,	Ga.	23
Meridian,	Miss.	16
East Birmingham,	Ala.	7
Bessemer,	Ala.	6
Grasselli,	Ala.	5
Northport,	Ala.	1
Atlanta,	Ga.	1
Macon,	Ga.	1
New Orleans,	La.	1
	Total	139

It will be observed that out of the total of 139 carloads of fertilizer moving to destinations on the Alabama, Tennessee & Northern in Alabama during the period stated, 41 carloads originated at points in other States, such as East Point, Atlanta, and Macon, Georgia, and New Orleans, Louisiana. Atlanta, Macon and East Point are in the central portion of the State of Georgia, while the points on the Alabama, Tennessee & Northern are in the western portion of the State of Alabama.

Mr. C. W. Hayward, appearing on behalf of the Meridian, Miss., Traffic Bureau, testified in part as follows (R. 742):

> "We are in accordance with the principle of equalization, which we understand it is the purpose of the Commission to effect by this investigation. We have discriminations against Meridian not only in the intrastate rates in Alabama, but also in the interstate rates from manufacturing points in Mississippi and from points in Georgia."
>
> "* * * We have a large fertilizer factory in Meridian. They operate three factories, one in Meridian, one at Hattiesburg, and one at Shelbyville. And fertilizer is a commodity that is not necessarily limited to a restricted zone of distribution. The Meridian Fertilizer Factory can and does ship into Alabama, Georgia, Florida, and all over the Southeast, wherever they may place their product, and I do not know to what extent, whether they do to a very large extent, but it is not a commodity that is limited in its distribution.
>
> "As to the movement into Mississippi, I know that there has been a movement from Alabama—possibly Montgomery, Alabama, into plants surrounding Meridian, into our trade territory, and that has been possible largely because of these discriminations in favor of the Montgomery ship-

per, the Alabama shipper. I don't know that our factory ships into Georgia, now. I would not be in position to state definitely that they are covering those States to any extent, but I say it is possible to do it, just as it is possible for Atlanta or Montgomery or Birmingham or any fertilizer manufacturing point to ship into Mississippi, but we think that rates from Meridian into Alabama and Georgia should be on the same plane, same relative plane, as rates from fertilizer plants in Alabama and Georgia to Mississippi." (R. 742-744.)

Witness T. A. Bosley, testifying on behalf of the National Fertilizer Association (R. 684) said:

"The movement of fertilizer varies so—that is, I mean, it varies from different factories. One year, a good big tonnage may move from a certain point and the next year that tonnage may be decreased very much, and move from another point, and of course that would affect the revenue to a great extent." (R. 701.)

Witness J. H. Alldredge, who appeared in the hearings before the Commission as a witness for the *Alabama Public Service Commission*, testified:

"Now, as to grading the scale. *Fertilizer factories are scattered all over the Southeastern Territory, and are actively competing in common territory in the sale of fertilizer, and if a scale breaks too abruptly, the chances are that one or more of the several factories competing in the same territory will obtain the advantage of the breaking scale, and use it against its competitors.* The sale of fertilizer seems to have pretty keen competition, and the fertilizer factories are scattered around, so that in almost every spot in the South-

east there is competition between two or more factories." (R. 818, 819.) (Italics supplied)

And again, this witness testified as follows:

"Now, there is another very important element entering into this question of grading of fertilizer scale, and balancing it, *particularly as between the short hauls and the long hauls.* There are factories situated along the Gulf Coast and the South Atlantic and North Atlantic Coasts that have a natural advantage in assembling their raw materials over the interior factories. And *if a scale is graded in such a way that an artificial preference is given to the long-haul shipper over the short-haul shipper located back in the interior, he can combine that advantage with his natural advantage, and play havoc with the interior man.* I do not know of anything that is more important to be considered in the grading of the scale than that fact itself. We endeavored to avoid that. I do not say that the short-haul shipper should have any advantage over the long-haul shipper; I think that both should have justice, but it is quite important to see that the scale is not unbalanced as between the short hauls and the long hauls." (R. 819.) (Italics supplied)

Certainly this representative of the State of Alabama recognized that the movement of fertilizer and fertilizer materials was not confined to short hauls and the importance of having the rates so made as to bring about a fair and proper relationship as between the short-haul and the long-haul shipper. This is directly contrary to appellants' contention, as we understand it, that the movement of fertilizer into Alabama is for short hauls from border points in other States.

The foregoing references to the record should be

sufficient to dispose of such statements appearing in the brief for the appellants as that "the proof, if any, of a violation of Section 3 relates to certain border competition along the boundaries of the State of Alabama; there is no pleadings or evidence covering all the intrastate rates in Alabama on fertilizer" (appellant's brief, page 17); or the statement in the brief that "as to many shipments within Alabama no competition is shown or attempted to be shown, and none exists" (brief, page 31); or the further statement appearing in this brief that "the complaint and evidence here deals with only a few points" (brief, page 43). The undisputed testimony of witness after witness in the case is to the effect that fertilizers and fertilizer materials move throughout the State of Alabama in both intrastate and interstate commerce; that the interstate movement into that state is not confined to border points, but, on the contrary, there is a large movement from points outside of Alabama, both into and through that state, and for relatively long hauls (see also Appendix B hereto); and further, that in Alabama, as in other portions of Southern territory generally, fertilizer factories are located at numerous points, and the various manufacturers are active competitors among themselves for the sale and distribution of their products throughout the surrounding territory. These facts, moreover, appear not only from the testimony of both railroad and shipper witnesses, but also from the testimony of the rate witness for the Alabama Public Service Commission (R. 818, 819).

Upon the question of discrimination as between persons and localities under Section 3, counsel for appellants further contend that the Commission was without authority to enter the order complained of because,

it is said, certain of the intrastate rates in Alabama were higher than the interstate scale which the Commission prescribed. The statement is made in the brief (at page 42) that "about one-third" of the movement in Alabama is under rates that are in excess of the rates established by the Interstate Commerce Commission. We are unable to find in the record any basis for this computation. But if the jurisdiction of the Commission is questioned upon this ground, the obvious answer is that even if some rates in Alabama were higher than the scale which the Interstate Commission prescribed, *that situation did not exist during any part of the time in which the investigation was instituted, conducted, and concluded by the Commission and its report entered.* On the contrary, the record shows that when the proceeding was instituted the interstate rates between Alabama and other States were generally higher than the intrastate rates in Alabama for like distances. Witness Drescher testified that out of a total of 2,355 rates (shown by his Exhibit No. 166) the Alabama scale was less than the interstate rates in 2,145 instances, higher in 182 instances, and was the same in 28 instances. (R. 450). Morever, the Commission found and stated in its report:

> "Taking up first the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment." (R. 91).

The Commission further stated:

> "One of the shippers' principal witnesses admitted that the rates which they propose (Ala-

bama scale) are, with the exception of rates within Mississippi and for short distances in Georgia, *lower than any existing fertilizer rates in southern territory that have been prescribed either by us or by State commissions.*" (R. 58).

It was this discriminatory situation—which the Commission found to exist at the time when its investigation was conducted—of which the correction constituted one of the very purposes of the investigation. It follows, therefore, that the mere fact that the mileage scale which the Commission prescribed for uniform application as the result of this investigation may, in some instances, be lower than the rates in effect at the time in Alabama, can not possibly serve to break down or destroy the jurisdiction or power of the Commission in the premises. What the Commission did was to prescribe a scale of which the announced purpose and intent was that it should be applied uniformly throughout the territory, thereby removing not ony the existing discriminations against persons and localities under Section 3, but removing also the discrimination against interstate commerce itself which the Commission found to exist under Section 13, in connection with the body of the Alabama rates as a whole.

Transportation conditions within Alabama are not dissimilar to those prevailing with respect to interstate transportation from points in adjacent States to destinations in Alabama. (R. 456-457, 495.)

In this connection the Commission, in its report, said:

"* * * the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls." (R. 93.)

Throughout the entire proceeding before the Commission, the fertilizer interests as well as certain State authorities, urged the importance of and necessity for a uniform level of rates on fertilizer and fertilizer materials throughout Southern territory.

Mr. A. D. Strobhar, testifying before the Commission as the representative of the President of the National Fertilizer Association (R. 648) stated, in part, as follows:

> "Q. May it fairly be said, Mr. Strobhar, so far as you know, it is the point of view of the executive committee of the Association that it is quite important, as soon as possible, to substitute a uniform mileage basis on fertilizer for the present, more or less jumbled hodge-podge of rates that exist?
>
> "A. They are important, very important." (R. 653.)

Mr. Wm. H. Fleming, appearing on behalf of the Southern States Phosphate & Fertilizer Company, said:

> "I am here representing the Southern States Phosphate & Fertilizer Company at Augusta, and their head office in Savannah, and we are here to ask removal of the discrimination against us in favor of shippers at Charleston and Columbia, South Carolina." (R. 605.)
>
> "* * * Under the Constitution of the United States and under the Interstate Commerce Law, this company is entitled to have the above mentioned discrimination against it removed.
>
> "The whole trend of Federal legislation and judicial construction has been in the direction of preventing discrimination by one State against another in general commerce." (R. 606.)

Mr. T. A. Bosley, Traffic Manager of the Virginia-Carolina Chemical Corporation, who appeared on behalf of this company and the National Fertilizer Association, testified, in part, as follows:

> "The movement of fertilizer varies so—that is, I mean it varies from different factories. One year a good big tonnage may move from a certain point, and the next year that tonnage may be decreased very much, and move from another point, and of course that would affect the revenue to a great extent." (R. 701.)
>
> "* * * We are proposing the same rates intrastate as interstate. I don't see how we can except any State from that, to be consistent.
>
> "I think rates should be the same in all states especially if the interstate rate is the same. We are not suggesting that there should be any different level of rates in different parts of southern territory." (R. 706.)

Commissioner Maxwell, of the North Carolina Corporation Commission, appeared on behalf of the authorities of the State of North Carolina and stated, in part:

> "It is our opinion that a lower level than the Royster Scale should be adopted for general application throughout the Southeast, and it is the purpose of the North Carolina Corporation Commission to revise the schedule of rates on fertilizer between points in North Carolina before the season for another general movement of fertilizer *and as soon as this may be done without creating discrimination against interstate shippers.*" (R. 604.) (Italics supplied.)

In summarizing the evidence with respect to the discrimination in favor of Alabama shippers and lo-

calities against interstate shippers and localities the Commission said, in its report, 113 I. C. C. at pages 431 and 432 (R. 91-93):

"Taking up, first, the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment. In conjunction with the present rates are shown also the rates under the single-line Royster scale and under the scale herein found reasonable, for the distances shown:

From	To	Distance *Miles*	Present rates *Cents*	Royster scale *Cents*	Scale herein prescribed *Cents*
Tupelo, Miss.	Glen Allen, Ala	72	230	214	200
Birmingham, Ala.	do	75	170	214	200
Chattanooga, Tenn.	Larkinsville, Ala.	62	210	203	185
Decatur, Ala.	do	60	155	203	180
Nashville, Tenn.	Elkmont, Ala.	98	259	259	225
Birmingham, Ala.	do	107	205	259	235
Columbus, Ga.	Superior, Ala.	46	203	180	165
Montgomery, Ala.	do	49	145	180	165
Columbus, Ga.	Alexander City, Ala.	75	237	214	200
Birmingham, Ala.	do	82	180	237	210
Rome, Ga.	Anniston, Ala.	63	216	203	185
Birmingham, Ala.	do	63	160	203	185
Atlanta, Ga.	Heflin, Ala.	85	259	237	210
Birmingham, Ala.	do	82	180	237	210

In the foregoing table, destinations have been selected approximately equidistant from the respective origins, but for other distances the intrastate and interstate rates bear a similar relation. Manufacturing plants are located at all the originating points shown, and the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls.

The Alabama commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing *Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks*, 85 I. C. C. 66, and that before an intrastate rate may be condemned it must be found to work an undue prejudice against persons or localities in interstate or foreign commerce or unjust discrimination against interstate or foreign commerce as a whole, citing *Wisconsin R. R. Commission, v. C., B. & Q. R. R. Co.*, 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the Alabama rates is 5 tons higher than under the interstate rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but specific consideration of the present interstate rates is unnecessary, for they will be changed under our findings herein. As shown by the above table, the new rates will be substantially higher for equal distances than the Alabama intrastate rates, and they will be subject to the same carload minimum.

While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneoulsy applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful."

And again, at page 435 of its report (R. 101) the Commission said:

> "That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce."

The most cursory examination of the voluminous record before the Commission in these consolidated proceedings will serve to convince that there was ample evidence to justify the findings made that the interstate and intrastate rates throughout southern territory should be on a uniform basis, and that the Alabama intrastate rates were discriminatory against persons and localities in other states and also against interstate commerce. All parties in interest who appeared and testified conceded that state and interstate rates should be on a common level and certainly the Alabama Commission did not controvert the proposition that one uniform level should prevail. The single exception to this concensus of opinion was the view expressed by the Florida East Coast, which desired a somewhat higher level to and from points in the Florida peninsula than the Commission prescribed for Southern territory as a whole. The Commission comments upon this practical unanimity of view in regard to a common rate level at several points in its report, and it finds as a fact that the record supports one uniform rate level. (113 I. C. C. 422.) On this point it said:

> "Considering all the circumstances surrounding this particular form of traffic and the general agreement upon this point, resulting in a paucity of evidence to the contrary, we think that the record supports one uniform level."

Reference has repeatedly been made to the fact that the Alabama intrastate rates, if applied throughout the territory, would have reduced the carriers' revenues at least $1,250,000 annually. (R. 71.) Reference has likewise been made to the fact that substantially seventy per cent of the tonnage, and sixty per cent of the revenue derived from the transportation of fertilizers and fertilizer materials between points in southern territory is represented by traffic moving on intrastate rates. (70-71.) Obviously if the state commissions were left free to make the intrastate rates in their respective states substantially lower than the interstate level which the Commission had prescribed on the assumption that the intrastate rates would be brought into conformity therewith and kept upon that level, then the revenues of the carriers from this traffic would be seriously depleted and they would be required to handle traffic at less than reasonable rates, or the loss would have to be made up by increasing the interstate rates on fertilizer and fertilizer materials, as well as on other commodities, since so large a preponderance of the tonnage of this traffic is intrastate.

We have, then, the facts that the Commission has fixed the interstate level; that it has found there is no justification for any lower rates intrastate in Alabama; that one scale should prevail, and one uniform level be observed, throughout southern territory; that

it prescribed a scale and a rate level to be applied uniformly, on the assumption that the intrastate rates would be brought to that level, and expressed the expectation that the State commissions would bring their rates into harmony with the interstate level so prescribed; that it has found that the Alabama intrastate rates, if continued on the present level (which is substantially lower than the interstate level) would violate the positive provisions of the Interstate Commerce Act and would create the undue prejudice and unjust discrimination, not only against persons and localities served in interstate commerce, *but the unjust discrimination against interstate commerce forbidden and declared to be unlawful by paragraph 4 of Section 13 of the Interstate Commerce Act, as amended.*

5.

The Commission's Findings of Undue Discrimination, Being Grounded Upon Substantial Evidence, Are Conclusive and Will Not be Reviewed by the Courts.

The repeated decisions of this Court, to which reference will presently be made, declare the law to be that the finding of the Commission on the question of discrimination is conclusive if there is any evidence to support such finding, and that the Court will not undertake to weigh the evidence or to measure the degree of discrimination; and further, that for the Court to consider the weight of the evidence or to pass upon the wisdom of the order entered, is beyond its province.

The Commission says that to continue the Alabama intrastate rates will create the undue prejudice and

unjust discrimination forbidden by law. The Alabama Commission says that it will not do so. It is submitted that the views of the Interstate Commerce Commission must prevail, as it is dominant in the field of regulation when the Federal power is called in question and the exercise of that power is necessary to preserve and protect the revenues of the carriers, the interstate rate level, interstate commerce, and persons and localities served therein.

The Interstate Commission, after having made its findings in regard to the Alabama intrastate rates, and having likewise found that they should be placed upon the level which it prescribed as reasonable for interstate rates, as stated, in a spirit of comity and in an effort to cooperate with the Alabama Commission, afforded that tribunal an opportunity to bring the intrastate rates into line with the interstate rates and thus cooperate with the Interstate Commission. (R. 102.) That the Alabama Commission has declined to do. (R. 10.) It still adheres to and persists in the view that it is for it to determine whether there is unjust discrimination against interstate commerce or an undue burden upon interstate commerce or unjust discrimination or undue prejudice to persons and localities served in interstate commerce by reason of the maintenance of intrastate rates in Alabama which are substantially lower than the interstate rates promulgated by the Interstate Commission, prescribed and fixed by it as a standard not only for interstate rates, but for intrastate rates in the three southern states where the intrastate rates were directly in issue before it, including the State of Alabama.

That the judgment of the Interstate Commission must prevail does not admit of doubt. As was said

by this Court in the *Minnesota Rate Cases*, 230 U. S. 352, 57 L. ed. 1511-1555, quoted with approval in the *Wisconsin case, supra:*

> "The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the comingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the state, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

Commenting on this immediately after having made the foregoing quotation from the *Minnesota Rate Cases*, this Court said in the *Wisconsin case*, 66 L. ed. at page 384:

> "It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with

> intrastate rates as between themselves *on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.*" (Italics supplied.)

The Court then referred to what might be accomplished through cooperation, and said:

> "So, too, in practice, when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid Federal order as to the intrastate rates."

The question is not merely one of interstate rates versus intrastate rates, where the interstate rates have not been passed upon by the Commission. We have seen that in its comprehensive investigation the Commission, in the discharge of the duties confided to it by law, fixed the general rate level and the scale to be used in attaining and preserving that level, having in view not only the interstate rates, as such, but the intrastate rates which all parties admitted should be harmonized therewith. As the result of a most thorough, painstaking, and exhaustive investigation, it prescribed this rate level to be observed throughout the territory. Under appropriate issues made concerning the Alabama intrastate rates it has found and held, after a most thorough and exhaustive investigation and after hearing all parties, that the maintenance of rates in Alabama, on a level which it finds to be materially lower than the level which it has prescribed for general application throughout the South, includ-

ing the state of Alabama, will unjustly discriminate against and unduly burden interstate commerce and will constitute an unjust discrimination and undue prejudice against persons and localities served in interstate commerce; and that this unjust discrimination and undue prejudice must be removed, and it orders that it shall be removed by placing the Alabama intrastate rates upon the same level and basis as that which it has prescribed for general application throughout the whole of Southern territory. That its findings and conclusions in regard to unjust discrimination and undue prejudice found to exist are conclusive, and that the Court may not weigh the evidence or the wisdom of the order entered by the Commission, is settled by a long line of decisions of this Court, some of which are as follows:

Virginian Ry. vs. United States, 47 Sup. Ct. Rep. 222, 270 U. S. 658, ul L. ed.

Western Paper Makers' Chemical Co. vs. United States, 271 U. S. 268.

United States vs. Illinois Cent. R. R., 263 U. S. 515, at pp. 521-526.

Interstate Commerce Commission vs. Illinois Central R. R. Co., 215 U. S. 452, 470.

Interstate Commerce Commission vs. D., L. & W. R. R. Co., 220 U. S. 235, 251.

United States v. Louisville & Nashville R. R. Co., 235 U. S. 314, 320.

Manufacturers Ry. Co. v. U. S., 246 U. S. 457, 481-2.

Seaboard Air Line Ry. Co. vs. U. S., 254 U. S. 57, 62.

See also:

U. S. v. Pennsylvania R. R., 266 U. S. 191, 199.

In *Virginian Ry. Co. v. United States, et al., supra,* concerning the Commission's finding of unjust discrimination, it was said, 272 U. S., at page 663:

> "The Virginian attacks the Commission's finding of unjust discrimination. There clearly was substantial evidence to support every fact specifically found. To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made by it in other cases, is beyond our province. Whether a rate is unjustly discriminatory is a question on which the finding of the Commission, supported by substantial evidence, is conclusive, unless there was some irregularity in the proceeding or some error in the application of rules of law. *Western Paper Makers' Chemical Co. v. United States,* 271 U. S. 268."

In *Interstate Commerce Comm. v. Ill. Cent. R. R.* 215 U. S. 452, the distinction between the power to make the order and the authority for the Court to review the question of power, as distinguished from the expediency or wisdom of making the order, and the lack of power in the Court to review or weigh the sufficiency of the evidence on which the order is based, is thus stated by the Court, at page 470:

> "The statute endowing the commission with large administrative functions, and generally giving effect to its orders concerning complaints before it without exacting that they be previously submitted to judicial authority for sanction, it becomes necessary to determine the extent of the powers which courts may exert on the subject.
>
> "Beyond controversy, in determining whether an order of the commission shall be suspended or

set aside, we must consider, *a*, all relevant questions of constitutional power or right, *b*, all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and, *c*, a proposition which we state independently, although in its essence it may be contained in the previous one, *viz.*, whether even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it, in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Postal Telegraph Cable Company v. Adams*, 155 U. S. 688, 698. Plain as it is that the powers just stated are the essence of judicial authority, and which, therefore, may not be curtailed, and whose discharge may not be by us in a proper case avoided, *it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised.*

"Power is to make the order and not the mere expediency or wisdom of having made it, is the question." (Italics supplied.)

Likewise, in *Manufacturers Railway Co. v. U. S. et al.*, 246 U. S. 457, it is emphasized that the Court cannot substitute its judgment for that of the Commission upon the sufficiency of the evidence, or upon matters purely administrative, confided to the judgment of the Commission by Congress, and in so holding the Court said, at page 482:

"The conclusions were reached after full hearing, are not without support in the evidence, and we are unable to say that they show an abuse of discretion. It may be conceded that the evidence would have warranted a different finding; indeed the first report of the Commission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this can not be done. *United States, v. Louisville & Nashville R. R. Co.*, 235 U. S., 314, 320; *Pennsylvania Co. v. United States*, 236 U. S. 351, 361."

In *United States v. Louisville & Nashville R. R. et al.* 235 U. S. 314, 59 L. ed. 245, this Court reversed the decision of the Commerce Court, wherein the last named court, having found that there was no conflicting evidence or dispute concerning the origin and character of the reshipping privilege at Nashville, concluded that whether such privilege was an undue preference was not a matter of fact, but a question of law upon which it was the duty of the Commerce Court to reach an independent conclusion. The Commerce Court, therefore, among other considerations, because the rebilling privilege was of long standing and was justified by water competition at Nashville, declared it to be not unlawful and not preferential. This Court reversed the decision of the Commerce Court, upheld the order of the Commission, and in doing so said, at page 320:

"In view of the doctrine announced in Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 452, 54 L. ed. 280, 30 Sup. Ct. Rep. 155; Interstate Commerce Commission v. Delaware, L. & W. R. Co., 220 U. S. 235; Interstate Commerce

Commission v. Louisville & Nashville R. R., 227 U. S. 88, it plainly results that the court below, in substituting its judgment as to the existence of preference for that of the Commission, on the ground that where there was no dispute as to the facts it had a right to do so, obviously exerted an authority not conferred upon it by the statute. It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed. East. Tenn. etc. Ry. Co. v. Interstate Commerce Commission, 181 U. S. 1, 23, 29. And the amendments by which it came to pass that the findings of the Commission were made not merely *prima facie* but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases, *supra*, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It can not be otherwise since if the view of the statute upheld below be sustained, the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action."

In the decision in the *New England Divisions Case.* (*Akron, C. & Y., et al. v. U. S.*) the Court said, 67 L. ed., at page 615:

> "To consider the weight of the evidence, or the wisdom of the order entered, is beyond our province."

In *Seaboard Air Line Ry. v. U. S.*, 254 U. S. 57, the rule is thus stated, at page 62:

> "Moreover the determination of questions of fact is by law imposed upon the Commission, a body created by statute for the consideration of this and like matters. The findings of fact by the Commission upon such questions can be disturbed by judicial decree only in cases where their action is arbitrary or transcends the legitimate bounds of their authority."

In *Louisville & Nashville R. R. Co. v. U. S.*, 245 U. S., 463, it was held:

(1) That the Commission's findings of fact, based on evidence before that tribunal, are conclusive; and

(2) That on the issues presented the validity of the order depended on the evidence before the Commission, and the trial court in the suit attacking the order did not err in excluding other evidence.

The Court said, at page 466:

> "The case comes here by direct appeal; and thirty-eight errors are assigned. Eleven relate to the weight or sufficiency of the evidence before the Commission. The evidence was conflicting. And, as there was ample to sustain the findings, they are conclusive. United States v. Louisville & Nashville R. Co., 235 U. S. 314, 320. * * * Other errors assigned relate to the exclusion by the court of evidence which was clearly inadmissible, both because of the character of the evidence and because, on the issues presented, the validity of the order must be determined upon the evidence introduced before the Commission."

See also *Procter & Gamble Co. v. U. S.*, 225 U. S. 282, wherein this Court had occasion to consider the

Act creating the Commerce Court, and held that the latter Act did not confer upon that tribunal jurisdiction to interpret originally the administrative features of the Interstate Commerce Act, and further, that the Commerce Court could not construe a refusal of the Commission to grant relief as an affirmative order which, it was contended, the Commerce Court could in turn construe with a view of granting relief which the Commission had denied. This Court, in holding that the Commerce Court had no such power, said, at page 297:

> "Originally the duty of the courts to determine whether an order of the Commission should or should not be enforced carried with it the obligation to consider both the facts and the law. But it had come to pass prior to the passage of the act creating the Commerce Court that in considering the subject of order of the Commission, for the purpose of enforcing or restraining their enforcement, the courts were confined by statutory operation to determining whether there had been violations of the Constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred although it may not be technically doing so. Interstate Commerce Commission v. Union Pacific R. R. 222 U. S., 541, 547; Interstate Commerce Commission v. Illinois Cent. R. R., 215 U. S. 452,"

and in overruling the decision of the Commerce Court and holding that the provisions of the Act creating that Court did not confer the jurisdiction which it had sought to exercise in that case, it was further said, at page 298:

"In view of the provisions of the act to regulate commerce just referred to as originally enacted, of the legislative evolution of that act, its uniform practical enforcement and the constant judicial interpretation which we have thus briefly indicated, it is impossible, we think, in reason, to give to the act creating the Commerce Court the meaning affixed to it by the court below, since to do so would be virtually to overthrow the entire system which had arisen from the adoption and enforcement of the act to regulate commerce. First, because as the previous ascertainment by the Commission on complaint made to it as to whether violations of the act had been committed, with reference to the subjects as to which previous action was required, was an essential prerequisite to a right to complain in a court, the interpretation given below would, by destroying the necessity for the prerequisite action of the Commission, operate to create a vast body of rights which had no existence at the time the Commerce Court act was passed. Second, because the recognition of a right in a court to assert the power now claimed would of necessity amount to a substitution of the court for the Commission or at all events would be to create a divided authority on a matter where from the beginning primary singleness of action and unity was deemed to be imperative. Third, because the result of the interpretation would be to bring about the contradiction and the confusion which it had been the inflexible purpose of the lawmaker from the beginning to guard against, an interpretation which would seemingly create rights hitherto non-existent, and yet at once proceed to destroy such rights by bringing about a confusion which would render the rights which the act creates practically valueless. Indeed, these inevitable results of the interpretation given by the court below to the act would necessarily amount to declaring that Congress in seeking to unify and

> perfect the administrative machinery of the act to regulate commerce and to make more beneficial its operation had overthrown the whole fabric of the system as previously existing."

The *Louisville & Nashville Case, supra,* expressly holds that new evidence cannot be introduced before the Court to attack an order of the Commission, and that the lower Court properly excluded evidence which was offered in an effort to set up facts which the defendant contended would militate against the propriety or wisdom of the order, but which evidence was not before the Commission in the proceeding in which the order was made, one of the reasons given by the Court for the exclusion being that—

> "The validity of the order must be determined upon the evidence introduced before the Commission."

The decision in the *Procter & Gamble Case, supra,* also tends strongly to this view, while in the recent case of *C. R. I. & P. Ry. Co. v. U. S.*, 47 Sup. Ct. 486, it was held that where the determination of the Interstate Commerce Commission finds substantial support in the evidence, it is not within the province of the Court to weigh the evidence, or to consider the wisdom of the Commission's action.

6.

Appellants Were Accorded a Full and Complete Hearing in the Proceedings Before the Commission.

Among the assignments of error by appellants is the following:

"5. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders condemned intrastate rates in Alabama in comparison with rates fixed by the Interstate Commerce Commission in a report dated July 19, 1926, when as to such rates so fixed there had never been any hearing concerning their relationship to the rates intrastate in Alabama."

Little need be said, we think, concerning this contention of appellants. While the order of the Interstate Commission is directed at the disparity between the interstate rates which it prescribed and the Alabama intrastate rates, the appellants contend that they have not had a hearing concerning the unjust discrimination and undue prejudice found, based upon the difference in the rate levels growing out of the interstate basis prescribed, on the one hand, and the intrastate rates in effect in Alabama on the other.

Paragraph 4 of Section 13 requires the Interstate Commerce Commission not only to remove the unjust discrimination found to exist, but to prescribe the rates to be observed for the future and which will remove the undue discrimination. The Interstate Commission, under the mandate of this section, must do two things: determine whether there is unjust discrimination, and direct how it shall be removed by prescribing the rate level to prevail for the future. It will scarcely be contended that the Alabama Commission, or any other party in interest, has not been heard concering the rate level to prevail for the future. That was most thoroughly investigated and finally determined in the *General Investigation of Fertilizer Rates*, Docket 16295, and the consolidated cases heard therewith, including Docket No. 16336. But, say appellants, we have not

been heard in regard to this rate level as contrasted with the intrastate rates in Alabama, nor have we been heard on the question as to whether the lower Alabama intrastate rates will unduly discriminate against the interstate rate level now in effect and promulgated by the Interstate Commerce Commission.

The Alabama Commission has been heard on both issues. It knew that in Docket 16336 the Alabama intrastate rates, which were lower than the interstate rates applicable into and out of Alabama, were under investigation and that the specific investigation ordered in said Docket 16336 was to determine—

> "(1) Whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroad, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, and,
>
> "(2) As to what rates, if any, or what maximum or minimum or maximum and minimum shall be prescribed to be charged by the petitioners in order to remove such advantage, preference, prejudice or discrimination if any may be found to exist." (R. 207-208)

It will be seen, therefore, that the inquiry was not only as to the discrimination, but as to how it should be removed and what rates should prevail for the future in order to remove such discrimination as might be found to exist. That investigation was consolidated and heard with the investigation of wider scope which was to determine the rate level which should prevail

in Southern territory, including the State of Alabama, and as to whether there should be different rate levels in different sections of Southern territory or only one common rate level.

The Alabama Commission was heard at length, as were other state commissions, through their representatives, as well as manufacturers and shippers and the carriers.

The Interstate Commission determined, upon an ample record, that there should be one uniform rate level throughout the territory, and that there were no differentiating circumstances or conditions within the State of Alabama which would justify or require any lower rate level within that state than that prescribed for interstate application from, to, and between points in Alabama and in other sections of Southern territory.

The Interstate Commission did not adopt the scale which was advocated by the Alabama Commission and by the manufacturers and shippers, nor did it adopt the higher scale which was advocated by the carriers. It is not understood that anyone seriously contends that the Interstate Commission in such an investigation was compelled to adopt either the one or the other. It was its duty, on the evidence, to fix what it considered to be the proper rate level to control for the future, and it did prescribe a general basis of rates on this traffic for application in Southern territory which was made reasonably and relatively low, according to its own statement, because of the characteristics of this traffic and other considerations mentioned in its report. It said that the same scale must be applied into, out of, and between points in Alabama, and there was no evidence which would justify any lower scale in Alabama than that which it had ordered for general application

in Southern territory. As it had already inaugurated an investigation specifically to determine whether there was discrimination brought about by lower intrastate rates in Alabama than those which applied, or would be concurrently applied, for interstate application, and had likewise directed a specific inquiry and made careful investigation to determine what rates should be charged in order to remove any unjust discrimination or undue preference found to exist, and all parties having been fully heard on said issues, it is certainly a most strained and unnatural contention that appellants now advance, namely, that a second investigation covering the same field should be made.

Notwithstanding the scope of the inquiries already made and the comprehensive investigation conducted and the painstaking analysis of all of the evidence and proposals advanced respectively by the many parties in interest, including appellants here, it is nevertheless contended by them that the Commission should go through the form of holding another hearing and undertake the useless procedure of again inquiring whether the lower Alabama intrastate rates constitute the unjust discrimination and the undue prejudice forbidden by the Act, and whether the scale of rates which the Commission has already promulgated and which has been published in obedience to its orders for application interstate throughout Southern territory and in practically all of the southern states for intrastate application, should be applied in the future for application between points in Alabama. The contention made by appellants is tantamount to saying that after the Commission made the investigation which it ordered in Docket 16336 upon both branches of the inquiry therein di-

rected to be made and after it determined that there was undue prejudice, and unjust discrimination flowing from the lower intrastate rate level in Alabama, and after it prescribed the rates to be observed for the future, it must nevertheless hold a second hearing and make the same investigation covering the same two points of inquiry before it could promulgate an order carrying into effect its findings. Such a proposition falls with the mere statement thereof.

It should be added that before the Commission promulgated its final report there was issued and served upon the parties a tentative or proposed report prepared by the Examiner of the Commission who sat throughout the hearing with the presiding Commissioner. The findings and conclusions in that report as to the lower Alabama intrastate rates, as to the fact that those rates are unduly low, and as to the undue prejudice and unjust discrimination resulting therefrom, are practically the same as those which are incorporated and made in the final report. The Alabama Commission was served with a copy of this tentative report. It filed exceptions thereto and a brief in support of its exceptions. It was heard in argument thereon and its exceptions were overruled and the final report issued, which promulgated a scale of rates on fertilizers differing somewhat in detail from that proposed by the Examiner of the Commission in his tentative report, but which the Commission said would produce substantially the same revenue level as that proposed by the Examiner (R. 37-1022).

This procedure, coupled with what had gone before, certainly accorded to the parties in interest every opportunity to be heard on any and every possible

objection that they, or any of them, might have to the proposed report, and likewise afforded to them an opportunity to argue and present their objections to the Commission for its consideration before final action thereon. Only after all of this had transpired did the Interstate Commission promulgate its final report and order.

7.

The Evidence of Record Supports the Commission's Action in Making Its Order Applicable to Short Line Railroads.

Appellants insist that the lower Court erred:

> "13. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein because such orders are made applicable to short line railroads when as to such railroads there was no evidence whatsoever as to the specific earnings of each road nor as to the relationship of the transportation over such railroads to transportation over interstate roads." (R. 243-244.)

The testimony submitted before the Commission was comprehensive in its scope and presented a complete picture of the situation as to the rates not only of the so-called trunk lines, but also of the so-called short lines.

John A. Streyer, Traffic Manager of the American Short Line Railway Association, appeared at the hearing and testified at length on behalf of the short line railroads in the South. (R. 582-598.) While he did not deal specifically with each and every short line, he did deal with the rates and earnings of numerous representative short lines and, generally, with the rate

structure and financial condition of all short lines in Southern territory.

Witness Gill testified on behalf of certain short lines, as follows:

> "The State Commissions of Alabama, Mississippi and Tennessee, have also in the past and do now recognize these lines as requiring special treatment and they have been, are permitted, and do now maintain higher intrastate rates than applicable over trunk lines. This is mentioned merely to illustrate that these lines, account of location, financial and physical conditions, traffic density, and nature of traffic, cannot afford to operate rates in effect on stronger trunk lines." (R. 556.)

One of the principal witnesses for the fertilzer interests, as well as counsel for the fertilizer industry, stated that they favored generous treatment for the short line carriers. (R. 758-759.)

In its report the Commission, in dealing with the proposal of the short lines, said:

> "The American Short Line Railroad Association, on behalf of its southeastern members, seeks a special basis of rates for these short lines because of their poor financial condition and limited traffic resources. The general basis of interstate rates on fertilizer to points on these lines is now the full combination over the trunk-line junction point. Intrastate rates are made, as a rule, on the combination basis less certain percentages, which vary in the different States. In Georgia the full combination contains. In Alabama, on the other hand, joint rates between trunk-line and short-line points are made 10 per cent higher than the joint trunk-line scale. The local short-line

rates in that State are 20 per cent higher than the rates of the standard lines, and for joint short-line hauls the same differentials are added as obtain between the single and joint standard-line rates. This Alabama adjustment is the one which the shippers propose for general application." (R. 65)

"Any detailed discussion of the situation with respect to the Association lines seems unnecessary. It has received consideration in other cases, including *Southern Class Rate Investigation, supra*, where, except in a few instances, the necessities of these short lines were recognized. They have been accorded special treatment by most of the States and, in general, the shippers seem to favor such treatment. In 1924, according to an exhibit filed by their representative, many of these carriers had a deficit in net railway operating income and comparatively few had good earnings." (R. 67.)

The assignment of error by appellants here immediately under discussion is likewise without merit. The findings of the Commission as to the short lines were fully justified by the evidence of record.

8.

There was Ample Evidence Before the Commission to Justify It in Prescribing the Single-Line Scale of Rates for Both Single-Line and Joint-Line Hauls.

Appellants insist that the lower Court erred:

"7. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein, which orders prescribed one class of rates applicable both to single line and joint line hauls for the reason that the issues and testimony presented to that Commission in the cause in which such orders were entered related solely to the es-

> tablishment of two classes of rates, one applicable to a single carrier and one applicable to two or more carriers joining in the same haul, such orders of the Commission being without evidence to support them and being entered in violation of the fifth amendment to the Constitution of the United States and the laws of the United States which give petitioners a full hearing and due process of law." (R., 242-243.)

Prior to the beginning of the hearings in the proceeding before the Commission, Commissioner Eastman, in charge of the case, served a notice on all interested parties outlining in a general way what the Commission expected to develop. Among other questions which this notice stated that the Commission desired to develop was:

> "What, if any, should be the difference between single-line and joint-line rates?" (R., 218.)

An examination of the record in the proceeding before the Commission will disclose that the entire field was surveyed. Evidence was submitted with respect to all rates on fertilizer and fertilizer materials, interstate and intrastate, throughout Southern territory. The Commission had information concerning the movement both single-line and joint-line. To say that the Commission, in the proceeding before it, was not authorized, on a voluminous and complete record, to prescribe a single-line scale for both joint line and single line application is tantamount to saying that the Commission, in no case, would be authorized to prescribe a single-line scale for both single line and joint line application. In its report the Commission clearly sets forth the reasons which prompted it to prescribe such a scale. In this connection it said (R. 80-81):

"Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint-line than for single-line hauls. The carriers would maintain such a difference for all hauls, while the shippers would have it disappear at 500 miles. In the *Southern Class Rate Investigation, supra*, we prescribed the same class rates for both classes of hauls, making the scale for this reason somewhat higher than it would have been if prescribed for single-line hauls only. In general the parties are in accord that whatever rule for computing distances is applied in connection with class rates shall be employed also for determining the rates here in issue. In our second supplemental report in the *Southern Class Rate Investigation*, 113 I. C. C. 200, decided July 19, 1926, we found that in computing distances the shortest routes should be used over which carload freight can be moved without transfer of lading, making the scale somewhat higher than if the "shortest workable" routes had been used as the measure. Carriers and most shippers agree that some definite rule for the computation of distances which may be applied without the exercise of judgment is desirable, inasmuch as it lessens the time and expense of preparing rates for publication and avoids controversies as to the proper rate-making distances. Unquestionably, also, there are many practical advantages in adopting a uniform rule for computing distances. When one basis is adopted and consistently adhered to, distances once computed may be applied for the ascertainment of rates on any commodity or class, where distance scales are employed.

In a general way the same principle applies to the question of whether rates for joint-line service should be made higher than those for single-line service. If on one commodity arbitraries for joint-line service be employed, while on another commodity one scale is used for both single-line and joint-line service, the distance which deter-

mines the rate between particular points will often be different in one case from that in the other. There will also be like variations as between different commodities on which joint-line arbitraries are applied, depending upon the volume of the arbitrary as compared with the volume of the single-line rate to which it is added.

Manifestly where no additions are allowed for joint-line service and where short-line distances are used as the measure the single scale should be correspondingly increased. As above noted, of the total fertilizer traffic covered by the traffic test, single-line rates were applied to 67 per cent. Joint-line arbitraries were therefore applied to only about one-third. It is also true that where joint-line arbitraries are used the carriers in many instances do not secure the full amount of the arbitrary nominally applicable for any given distance, for often slightly longer single-line routes will determine the applicable rates. Under the circumstances the elimination of joint-line arbitraries will require a comparatively small increase in the single-line scale."

Clearly the assignment of error by appellants immediately under discussion is not meritorious.

CONCLUSION.

We have not undertaken to discuss specifically each assignment of error made by appellants, but we believe that such assignments are covered by our general discussion of the case. An examination of the assignments, in the light of the record, discloses that none is meritorious and, therefore, that the decision of the lower Court dismissing the bill should be affirmed.

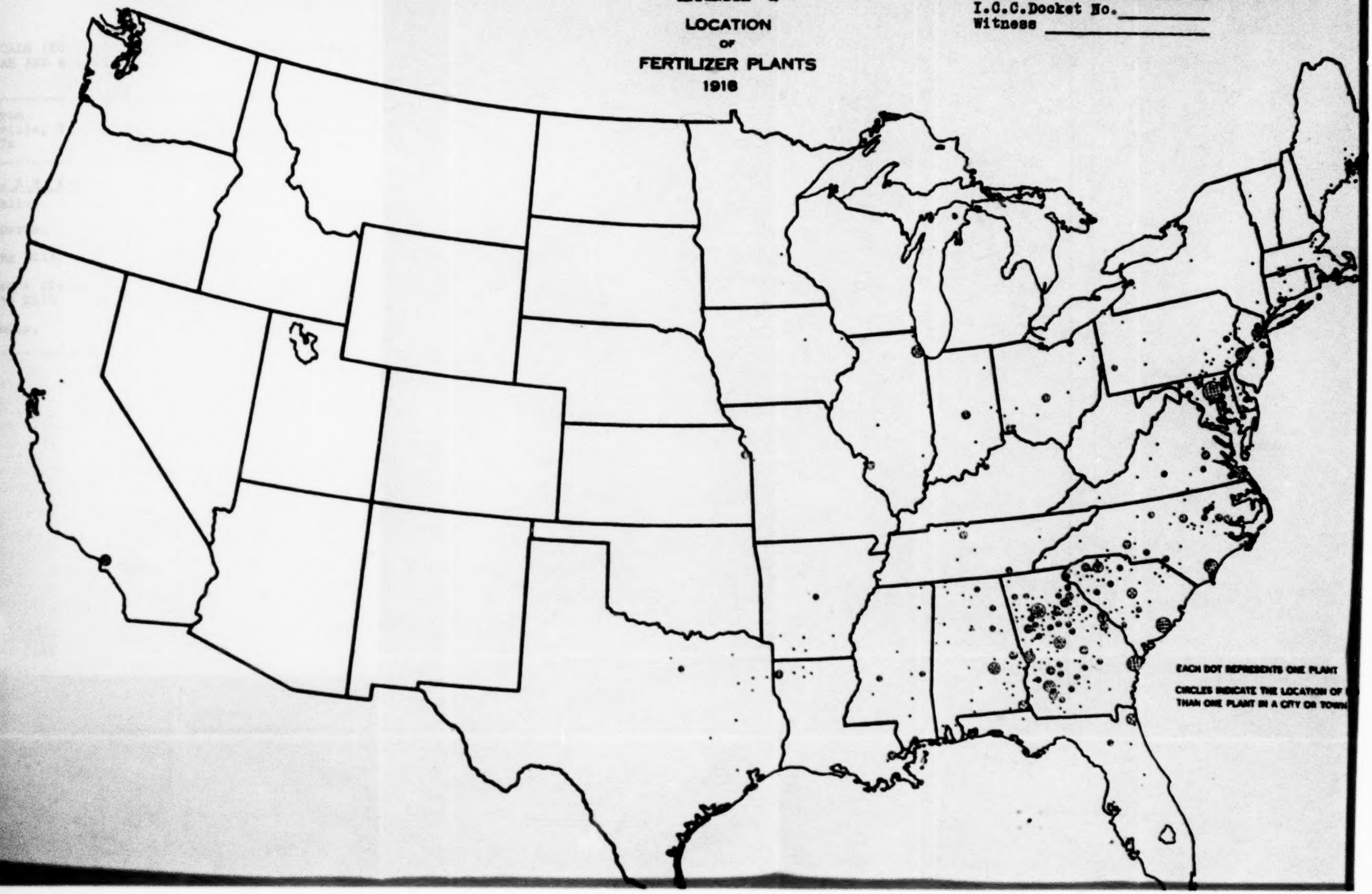
W. A. Northcutt,
F. W. Gwathmey,
Charles Clark,
W. N. McGehee,
Counsel for Alabama Carriers, Appellees.

January, 1929.

APPENDIX "A"

LOCATION OF FERTILIZER PLANTS 1918

Defendant's Exhibit No. 46
I.C.C.Docket No._____
Witness _____



APPENDIX "B"

General Investigation Rates on
Fertilizer and Fertilizer Materials
between Southern Points.
I.C.C. Docket No. 16295.

Respondent's Exhibit No. 291.

STATEMENT OF THE PRESENT RATES AND THE RATES ON BASIS OF THE THIRD ROYSTER SCALE (50 I.C.C. 34) FROM BIRMINGHAM, ALA. AND NASHVILLE, TENN. TO AGENCY STATIONS ON THE LOUISVILLE & NASHVILLE R.R. BETWEEN BIRMINGHAM AND NASHVILLE.

From Birmingham, Alabama To		Distance	Present Rate	Third Royster Scale	Movement March and April, 1925. Cars	Tons
L.&N. R.R. Stations						
Boyles,	Ala.	3	80	90		
Monmouth,	"	18	110	135		
Trafford,	"	24	120	147		
Hayden,	"	29	125	158	2	44.7
Blount Springs,	"	33	130	158	2	64.8
Garden City,	"	39	135	169	9	209.5
Hanceville,	"	45	140	180	15	459.2
Cullman,	"	53	150	192	56	1628.3
Lacon,	"	64	160	203		
Falkville,	"	67	165	214	4	77.8
Hartselle,	"	72	170	214	3	90.1
Decatur,	"	85	180	237	16	495.2
Tanner,	"	93	190	248		
Athens,	"	98	195	259	3	70.7
Elkmont,	"	107	205	259	1	40.3
Prospect,	Tenn.	115	259	270		
Aspen Hill,	"	120	259	270		
Pulaski,	"	126	259	270		
Wales,	"	131	259	282		
Riverburg,	"	134	259	282		
Buford,	"	138	259	282		
Lynnville,	"	142	259	293		
Pleasant Grove,	"	150	259	293		
Columbia,	"	160	259	315		
Park's Mill,	"	167	259	315		
Carter's Creek,	"	169	259	315		
Spring Hill,	"	174	259	327		
Thompsons,	"	177	259	327		
Franklin,	"	187	282	327		
Nashville,	"	205	293	349		

From Nashville, Tennessee To		Distance	Present Rate	Third Royster Scale	Movement March and April, 1925 Cars	Tons
L.&N. R.R. Stations						
Franklin,	Tenn.	18	147	135		
Thompsons,	"	28	147	158		
Spring Hill,	"	31	147	158		
Carter's Creek,	"	36	169	169		
Park's Mill	"	38	169	169		
Columbia,	"	45	203	180		
Pleasant Grove,	"	55	203	192		
Lynnville,	"	63	203	203		
Buford,	"	67	225	214		
Riverburg,	"	71	225	214		
Wales,	"	74	225	214		
Pulaski,	"	79	225	225	7	181.2
Aspen Hill,	"	85	259	237		
Prospect,	"	90	259	237		
Elkmont,	Ala.	98	259	259	8	256
Athens,	"	107	259	259	59	1800
Tanner,	"	112	259	270	3	59
Decatur,	"	120	225	270	8	238.2
Hartselle,	"	133	259	282	45	1053
Falkville	"	138	259	282	5	111.0
Lacon,	"	141	259	293	3	68.0
Cullman,	"	152	259	315	40	1159
Hanceville,	"	162	259	315	3	60
Garden City,	"	166	259	315		
Blount Springs,	"	172	259	327		
Hayden,	"	176	259	327		
Trafford,	"	181	282	327		
Monmouth,	"	187	282	327		
Boyles,	"	202	237	349	22	843.0
Birmingham,	"	205	237	349	1	40.0

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

NO. 166.

THE STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION,
Appellants,

vs.

THE UNITED STATES OF AMERICA, ATLANTIC COAST LINE RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, ET AL.

BRIEF FOR APPELLANTS ON APPEAL

By CHARLIE C. McCALL,
Attorney General of Alabama.

J. Q. SMITH,
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EDGAR WATKINS,
Atlanta, Ga.

HUGH WHITE,
President Alabama Public Service Commission.

December, 1928.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

NO. 166.

STATE OF ALABAMA, ET AL.,

vs.

UNITED STATES, ET AL.

BRIEF FOR APPELLANTS ON APPEAL.

GENERAL STATEMENT OF CASE SHOWING JURISDICTION.

Appellants, the State of Alabama and the Alabama Public Service Commission, brought this action in the United States District Court for the Northern District of Alabama, Southern Division, at Birmingham, seeking to enjoin and annul an order of the Interstate Commerce Commission.

This Court has jurisdiction of this appeal under Sections 47 and 345, Title 28, U. S. Code.

The order appealed from in this cause was entered on February 13, 1928, by a statutory court composed of three judges (R. 236 to 238); within 30 days, and on the 8th day of March, 1928, petition for appeal was presented and allowed (R. 238-239).

The suit in which the judgment was rendered, from which an appeal was taken, as hereinbefore stated, was brought to set aside orders of the Interstate Commerce Commission and to enjoin the railroad defendants from seeking to file and make effective tariffs in accordance with such orders. The United States was made a party defendant as

were the railroads interested (R. 1 and 2). The complaint sets out in full reasons why appellants claim that they were entitled to the injunction prayed (R. 1 to 18, inclusive). The United States answered (R. 27), and the Interstate Commerce Commission intervened as a defendant (R. 147). Three judges, two circuit judges and one district judge, heard the case and without writing any opinion denied an injunction (R. 236). In accordance with Section 47 of Title 28, U. S. Code, and within thirty days, an appeal was taken direct to this Court from such order denying, after notice and hearing, the interlocutory injunction prayed.

This Court has taken jurisdiction in similar cases. Typical of these are, *Louisville & Nashville R. Company v. United States*, 238 U. S. 1; *Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Company*, 257 U. S. 563; *Akron, C. & Y. R. Co. v. United States*, 261 U. S. 184, 189; *Virginian R. Co. v. United States*, 272 U. S. 658.

RECORD ON APPEAL.

All the testimony before the Interstate Commerce Commission on which it based its right to issue the order sought to be enjoined and set aside was introduced before the trial judges (R. 1030). On appeal as required by Equity Rule 75 appellants "stated in simple and condensed form" the parts of such testimony deemed "essential to the decision of the questions presented by the appeal." Appellees not agreeing that the testimony should be condensed presented all the testimony in narrative form and all the testimony before the Commission and the trial court except a few designated exhibits, is brought here by order of the trial court (R. 1031, 1033).

After the appeal reached this Court and in a further effort to reduce the record to be printed to its essential parts and complying with paragraph 9 of Rule 11 of this Court,

appellants stated the points on which they intend to rely and the parts of the record necessary to be printed (R. 1038-1043). Appellees replying designated all the testimony (R. 1043-1046). If, as we believe, the record is unnecessarily large, the fault lies with appellees.

STATEMENT OF THE CASE SHOWING QUESTIONS PRESENTED AND HOW THEY AROSE.

I. ORDERS OF THE COMMISSION SOUGHT TO BE ENJOINED.

In this proceeding appellants sought to suspend and set aside an order of the Interstate Commerce Commission entered October 3, 1927, and other orders, including that of December 22, 1927, entered supplementary thereto, in so far as such orders relate to intrastate commerce within the State of Alabama.

These orders were made upon the petition of the defendants, the standard lines of railroads. The Public Service Commission, one of the plaintiffs below, was a party to the proceedings under which such orders were made and participated therein (R. 1, 2).

The petition in this cause shows that effective July 25, 1924, in accordance with an order of the Alabama Public Service Commission, intrastate rates in Alabama on fertilizers and fertilizer materials were published by all the carriers defendant hereto; that some of such rates were lower per mile than some of the interstate rates on the same commodities; and that on July 30, 1924, the carriers, defendants in the original bill, filed a petition, called hereinafter Docket 16336, in the Interstate Commerce Commission as authorized by Section 13 of the Acts to Regulate Commerce, "on their own behalf and on behalf of all of the carriers operating in the State of Alabama," in which it was alleged that the rates effective July 25, 1924, prescribed by the Alabama Public Service Commission in its order of May 26, 1924—

> "are unjustly discriminatory against interstate commerce and place an undue burden upon interstate commerce in violation of Section 3 and Sub-divisions 3 and 4 of Sec-

tion 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920." (See paragraph 6 of original petition herein, R. 4.)

On October 14, 1924, the Interstate Commerce Commission in Docket 16336 (see Exhibit 5 of answer of standard line defendants, R. 206-207) ordered:

"(2) That all railroads subject to our jurisdiction operating within said State of Alabama be and they are hereby made respondents to this proceeding."

These short line railroads were also respondents to a general investigation, hereinafter referred to, which related solely to interstate rates and which was ordered by the Interstate Commerce Commission on October 14, 1924. (See Paragraph 7 of plaintiff's petition, R. 5.)

The order of general investigation was numbered on the docket of the Interstate Commerce Commission as 16295 and was entitled, "Fertilizers and Fertilizer Materials Between Southern Points," and that investigation is described by the Interstate Commerce Commission in its findings, 113 I. C. C. 392, as follows:

"A general investigation and inquiry—into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, . . . with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises." (R. 36, 37.)

When that investigation was before the Interstate Commerce Commission it was heard with Docket 16335, involving intrastate rates in South Carolina; Docket No. 16336, which is the docket referred to as being the complaint filed by the

interested carriers on July 30, 1924; and Docket No. 16484, pertaining to intrastate rates in Georgia.

The Commission having heard all four of these dockets together, all the testimony taken in such hearings was presented to the trial court as evidence, although much the greater portion of the record relates to matters other than the intrastate rates in Alabama.

The consolidated hearings seem to have been conducted on the theory that the Alabama case was merely a relatively unimportant incident of the general investigation.

Attached to the complaint as amended is a full copy of the order of October 3, 1927 (R. 24-25), the supplemental order of December 22, 1927 (R. 224), and a copy of all that part of the findings and opinion of the Interstate Commerce Commission which we believe is in anywise material to the issue. The full opinion of the Commission is reported in 113 I. C. C. beginning at page 389, but as most of this opinion relates to the interstate rates, only a small part of it is material to any issue in this case (R. 33 *seq.*).

The supplemental order of the Commission made December 22, 1927, subsequent to the filing of the petition in this case, extended the scope of the order of October 3, 1927, by including short line roads wholly within the State of Alabama. By amendment these short lines were made parties defendant (R. 220). After the order of October 3, 1927, some of these short line railroads, possibly all of them, petitioned the Commission asking that the order be extended to them (R. 225). This petition was served but no further hearing was had thereon.

The rates intrastate in Alabama, as generally in the South, are not the same on short line railroads as on the trunk line roads. The claimed reason for this is that some of the short line railroads, not all, would earn less than a fair return

were they limited to the same rates as the trunk lines, and both the Alabama Public Service Commission and the Interstate Commerce Commission have permitted these short lines higher than standard rates (R. 65, 66, 84).

The Interstate Commerce Commission made a broad conclusion as follows:

> "1. That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce."

The proof, if any, of a violation of Section 3, relates to certain border competition along the boundaries of the State of Alabama; there is no pleadings or evidence covering all the intrastate rates in Alabama on fertilizers; the Commission adopted a single scale when all evidence was directed to two scales and no one asked for a single scale. On this point (R. 80) the Commission said:

> "Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint-line than for single-line hauls. The carriers would maintain such a difference for all hauls, while the shippers would have it disappear at 500 miles."

And further discussing this point (R. 81) the Commission said:

> "Manifestly where no additions are allowed for joint-line service and where short-line distances are used as the single scale should be correspondingly increased. As above noted, of the total fertilizer traffic covered by the traffic test, single-line rates were applied to 67 per cent. Joint-line arbitraries were therefore applied to

only about one-third. It is also true that where joint-line arbitraries are used the carriers in many instances do not secure the full amount of the arbitrary nominally applicable for any given distance, for often slightly longer single-line routes will determine the applicable rates. Under the circumstances the elimination of joint-line arbitraries will require a comparatively small increase in the single-line scale."

II. THE GROUNDS UPON WHICH THE CLAIM OF INVALIDITY OF THE ORDER WAS BASED.

Paragraph 27 of the complaint as amended shows the reasons why appellants think the order of the Interstate Commerce Commission is void. (See original complaint, R. 13 *seq.* amended complaint R. 223, 224.) The assignment of errors (R. 241 *seq.*) has been summarized in the statement of "Points On Which Appellants Intend to Rely," which summary is:

Point 1. The District Court, three judges presiding, of the Northern District of Alabama, Southern Division, at Birmingham, erred in not enjoining the order of the Interstate Commerce Commission for that said order was beyond the power which the Interstate Commerce Commission could constitutionally exercise, such order regulated intrastate commerce not shown to affect or burden commerce among the States.

Point 2. The court erred in not enjoining the order for that such order was entered in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States in particulars as follows:

(a) There was no issue or testimony before said Commission or before said court relating to the relationship of the rates on transportation wholly within the State of Ala-

bama and the rates prescribed by said order to take the place of such intrastate rates.

(b) There was no issue raised justifying and no evidence to support the rates established by said order and made applicable thereby both to single and to joint line hauls wholly within the State of Alabama, both the issues and the evidence referred exclusively to rates for single lines lower than and different from the rates over two or more lines.

Point 3. The court erred in not enjoining the order for that such order was beyond the statutory power of the Interstate Commerce Commission in so far as it sought to regulate intrastate commerce and controlled rates charged for the transportation of property wholly within the State of Alabama.

Point 4. The court erred in not enjoining said order as the Interstate Commerce Commission in entering the order acted arbitrarily and unjustly, and prescribed rates for the transportation of property wholly within the State of Alabama contrary to all the evidence and without any evidence to support its action in particulars as follows:

(a) The issue raised and heard was whether or not the rates on the transportation of property wholly within the State of Alabama in their relation to the rates on interstate transportation violated Section 3 of the Interstate Commerce Act as amended by Transportation Act 1920 and as to many of the rates on transportation wholly within the State of Alabama there was no evidence of any such violation.

(b) There was no issue raised by the pleadings of the parties or order of the Interstate Commerce Commission between the rates on the transportation of property wholly within the State of Alabama and the rates found reasonable on interstate transportation and ordered applied intrastate in Alabama.

(c) There was no evidence to support a finding that all the rates on transportation wholly within the State of Alabama were in competition with interstate transportation.

(d) The order in so far as it applies on interstate transportation prescribes only maximum rates, while as applied on intrastate transportation in the State of Alabama it prescribes rates that are both maximum and minimum rates.

(e) Import rates on fertilizer materials are a part of the transportation charge and these rates were left on a group basis while domestic rates intrastate in Alabama were placed on a mileage scale.

(f) The order applicable to transportation wholly within the State of Alabama applies to all intrastate rates although some intrastate rates were higher than the prescribed rates interstate.

(g) There was no hearing, evidence or issue supporting a finding that all the rates on transportation wholly within the State of Alabama constituted a burden on interstate transportation.

(h) There was no evidence to support any order fixing intrastate rates on short lines of railway wholly within the State of Alabama.

(i) There was no evidence to support any order fixing the same rates applicable to single and to joint line hauls.

SUMMARY OF CONTENTIONS AND ARGUMENT.

The points on which appellees rely copied above are based on the assignments of error (R. 241) may be summarized as follows:

I. The orders complained of regulate commerce wholly intrastate when such commerce bears no substantial relation to and constitutes no burden on interstate commerce.

(A) Because such orders fix rates for transportation on shipments wholly within the State of Alabama and not shown to be and which are not competitive with interstate shipments.

(B) The Interstate Commerce Commission has no constitutional power to decrease intrastate rates.

II. The orders complained of violate the Acts to Regulate Commerce and are beyond the statutory power of the Interstate Commerce Commission.

(A) For the reasons stated in Sub-Division A of Paragraph I of this summary. (See above.)

(B) Because the issues and the testimony related only to violations of Section 3 of the Interstate Commerce Act and as to some of the intrastate rates prescribed by the Commission there was no issue and no showing of such a relation between the intrastate rates and the interstate rates as give statutory power to the Commission to act.

III. The orders complained of deny due process of law.

(A) Because the issues and the testimony related to the relationship of one set of rates to intrastate rates and the orders fix a relationship between such intrastate rates and another set of interstate rates.

(B) The petition of the carriers on which the order of investigation of the intrastate rates in Alabama was based claimed no violation of Section 15A of the Acts to Regulate Commerce and no evidence of such violation was shown although the order is sought to be sustained under said section.

(C) The issues and the testimony related to a system of rates which differentiate between hauls over one line and hauls over joint lines while the orders fix one rate applicable both to single and joint hauls.

IV. The orders sought to be enjoined were and are arbitrary and unjust.

(A) Because the rates prescribed intrastate are minimum rates while the rates interstate are maximum rates.

(B) Because the rates on import traffic are group and differential rates and the rates on intrastate traffic are mileage rates both sets of rates affecting the total charges for transportation.

(C) Because short lines wholly within the State of Alabama do not compete with the carriers engaged in hauling fertilizers interstate and are differently situated with reference to earnings and competition with trucks and there was no evidence showing any effect on or burden to interstate transportation because of the charges of these short-line-intrastate carriers.

V. The lack of testimony showing constitutional power or justifying its exercise, if power had existed; the absence of an issue comprehensive enough to constitute an opportunity for full hearing; the lack of substantial testimony as to the condition of short lines of railway in Alabama; of the relationship of joint hauls intrastate and interstate and the disregard of the issue and the testimony as to different rates for single and joint hauls show cumulatively that the Commission

acted arbitrarily and unjustly in issuing the orders sought to be enjoined.

I. THE CONSTITUTIONAL QUESTION: COMMERCE CLAUSE.

(A) PRELIMINARY STATEMENT OF APPLICABLE PRINCIPLES.

Constitutional questions present issues that must be submitted

> "to a judicial tribunal for determination upon its own independent judgment as to both law and facts." *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287, 289.

In *Louisville & Nashville R. Co. v. United States*, 238 U. S. 1, Lamar, J., said that,

> "since there is no contention at this time that the rate is confiscatory,"

the Court would leave it undisturbed as there was evidence to support it. In the course of argument in *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S. 88, Assistant Attorney-General Fowler admitted that

> "the determination whether a rate is reasonable and the determination whether it is unconstitutional are governed by entirely different principles."

And in *Manufacturers' R. Co. v. United States*, 246 U. S. 457, at p. 488, the Court, speaking through Pitney, Jr., said:

> "So long as the Commission proceeds in accordance with the requirement of the Commerce Act, its administrative orders . . . . if made after due hearing and supported by evidence, are not subject to attack in the courts.

But the cases recognize that matters of constitutional right are not to be conclusively determined by the Commission."

In *Mississippi Railroad Commission v. Illinois Central R. R. Co.*, 203 U. S. 335, 344, Mr. Justice Peckman said:

> "In reviewing statutes and also orders made by a state railroad commission it frequently becomes necessary to examine the facts upon which they rest and determine from such examination whether there has been an unconstitutional exercise of power . . ."

In *Bluefield Improvement Company v. Public Service Commission*, 262 U. S. 679, 688, the lower court had held:

> "that the valuing of the property of a public utility corporation and prescribing rates are purely legislative acts not subject to judicial review except in so far as may be necessary to determine whether such rates are void on constitutional or other grounds; and that findings of fact by the Commission based on evidence to support them will not be reviewed."

There was testimony in the case from which the above quotation is taken that actual investment, less depreciation, amounted to $365,000; that reproduction cost (at 1915 prices, the valuation being made in 1920), less depreciation, was approximately $398,000; that reproduction cost, less depreciation, at 1920 prices, was $1,194,663, and that the proper valuation for rate-making purposes was $900,000. With this conflicting testimony the Supreme Court, holding that the testimony of the utiliy had been disregarded, said:

> "Plaintiff in error is entitled under the due process clause of the 14th Amendment *to the independent judgment of the court as to both law and facts. Ohio Valley Co. v. Ben Avon*, 253 U. S. 287, 289." (Emphasis supplied.)

See also *Am. Bar Asso. Journal* XIV No. 7, p. 361.

(B) THE ORDERS SOUGHT TO BE ENJOINED REGULATE COMMERCE WHOLLY INTRASTATE AND VIOLATE THAT PROVISION OF THE CONSTITUTION, ARTICLE I, SECTION 8, PARAGRAPH 3, WHICH LIMITS THE REGULATORY POWER OF THE CONGRESS TO "COMMERCE . . . AMONG THE SEVERAL STATES . . ."

1. Statement of the Applicable Facts.

The proceeding out of which grew the orders complained of was begun by the carriers filing a complaint with the Interstate Commerce Commission based on the claim that there had been a violation of Section 3 and part of Section 13, copied in the margin,(1) of the Acts to regulate Commerce(2). It is our contention that a burden on interstate commerce under Section 15a, copied in the margin(3), is not alleged. On this complaint the Commission ordered an investigation which could not and did not enlarge the issues made by the formal complaint(4).

(1) "Petitioners aver that the rates prescribed by the Alabama Public Service Commission, in its said order of May 26, 1924, on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for intrastate application between points in the State of Alabama, and now in effect, give an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Alabama on the one hand, and persons and localities in interstate commerce on the other hand, and are unjustly discriminatory against interstate commerce and place an undue burden upon interstate commerce, in violation of Section 3 and Sub-Divisions 3 and 4 of Section 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920.

"Petitioners further show that if the said rates on fertilizers and fertilizer materials, and articles taking the same rates, so established by the Alabama Public Service Commission, are allowed to remain in effect, the purpose of the Interstate Commerce Act will be defeated and the result will be an undue and unreasonable advantage, preference or prejudice between persons and localities in interstate commerce, on the one hand, and intrastate commerce on the other, and that the interstate commerce will be unduly, unreasonably and unjustly discriminated against; all of which is forbidden and declared to be unlawful by the Interstate Commerce Act."

([2]) "Sec. 3. (As amended February 28, 1920.) (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

([3]) "Sec. 13-a. (As amended Febuary 28, 1920.) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified

from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the co-operation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

Paragraph 4 of Section 13:

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

(³) Paragraph 2 of Sec. 15a. So far as material reads:

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be,

to a fair return upon the aggregate value of the railway property of such carriers."

Paragraph 3 of the same section reads:

"The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: Provided, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

"For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under Section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to Section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the

Commission to be the value thereof for the purpose of determining such aggregate value."

(4) The Interstate Commerce Commission, on the 14th day of October, 1924, giving consideration to the complaint of the defendant railroads, and reciting facts of the complaint, ordered:

"(1) That an investigation be, and it is hereby instituted to determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist."

ARGUMENT AND AUTHORITIES.

All that can reasonably be claimed to have been proven by any substantial testimony is that some rates from interior points in Alabama to points in that state toward its boundary are lower for similar mileage than the interstate rates to the same destinations. The intrastate rates were not when the Commission made its findings of fact and conclusions of law comparable with the rates found reasonable in such findings and conclusions for interstate transportation.

The intrastate rates differentiate between single line and joint line hauls, the interstate rates prescribed are the same for both classes of hauls.

Intrastate there were special rates over the Alabama Great Southern Railroad, Alabama, Tennessee & Northern Railroad Corporation, Mobile & Ohio Rail Road, and Southern Railway Company.

The rates applied between local stations on those lines within 200 miles of Meridian and six important Alabama cities, namely, Birmingham, Mobile, Montgomery, Selma and Tuscaloosa.

For single-line hauls the rates in Alabama prescribed by the Interstate Commerce Commission in the Meridian Rate Case, 66 I. C. C. 179, and which were not disturbed by the Alabama Commission's order, were higher than the average level of Interstate rates and are higher than the Interstate Commerce Commission prescribed.

The interstate rates prescribed were lower than these rates and than rates on the Illinois Central which was classified in Alabama as a weak line.

It is also true that the joint-line scale prescribed by the Alabama Commission, which was superseded by the scale

prescribed by the Interstate Commerce Commission, averages as high as the scale which the Interstate Commerce Commission prescribed, and that the joint-line movement of fertilizer was shown to constitute 33 per cent of the total movement. There was shown some indication of competition between shippers shipping from some of the interior points and shippers in other states shipping to the same destinations. As to many shipments within Alabama no competition is shown or attempted to be shown and none exists, and where there is an indication of competition there is equally an indication that the same shippers had plants shipping both interstate and intrastate to points in Alabama (R. 826, 827).

Competition is an essential element of a violation of Section 3 of the Act.(5)

(5) Proof of competition essential when unlawfulness under Section 3 of Acts to Regulate Commerce is involved. In the Party Rate Case, *Interstate Commerce Commission v. Baltimore & O. R. R. Co.*, 145 U. S. 263, this court held that before unlawfulness could exist under Sections 2 or 3 there must be "undue advantage to one or undue advantage to the other"; and quoted with approval from *Hozier & Caledonian v. R. Co.*, 17 Sess Cas. 302, 1 Nev. & McN. R. Cas. 27, the statement:

> "You must bring them into competition in order to give them an interest to complain."

This court further illustrating the principle for which we contend cited *Jones v. Eastern Counties R. Co.*, 3 C. B. N. S. 718; *Ransom v. Eastern Counties R. Co.*, 1 C. B. N. S. 437; *Oxlade v. Northwestern R. Co.*, 1 C. B. N. S. 454.

As early as 1892 in *Rice v. C. W. & B. R. Co.*, 3 I. C. R. 841, 849, 5 I. C. C. 193, the Interstate Commerce Commission, said:

"In the absence of some competing relation between different articles of traffic, there would seem to be no opportunity, by means solely of the rates imposed upon them respectively, for that unjust discrimination which the law forbids."

United States v. Illinois Central R. Company, 263 U. S. 515, 521, where it was held:

"Mere discrimination does not render a rate illegal under Section 3 of the Act to Regulate Commerce, but, to be obnoxious to that section, the discrimination must be unjust." (2 head note)

And *Am. Express Co. v. Caldwell*, 244 U. S. 617, 624.

Note the definite and specific findings of the Commission in the first Shreveport Case, 23 I. C. C. 31, 46. In affirming the order of the Commission the Supreme Court held that intrastate rates could be changed—

"*to the extent necessary* to remove the resulting unjust discrimination against interstate commerce arising out of the relation between such intrastate rates and interstate rates which are reasonable in themselves."

The Shreveport Case is discussed more in detail later.

The practice of the Commission was referred to by the Court in *Anchor Coal Co. v. United States*, 25 Fed. (2d) 462, 471, as follows:

"In this connection it is of interest to note that in proceedings under Section 3 of the Interstate Commerce Act (49 U. S. C. A. Section 3; Comp. St., Section 8563), where it is unquestionably proper to consider length of haul in determining whether the rates fixed by the same carrier for different communities are unduly prejudicial, the Commission will not condemn rates on that ground, even where the rate relationship may appear improper

measured by distance, in the *absence of proof of injury. Boston Port Differential Case*, 95 I. C. C. 539; *Perry County Coal Corp. v. East St. Louis Ry. Co.*, 80 I. C. C. 711. As shown above, a rate relationship cannot be injurious to a community, where the rate which that community enjoys is lower than the rate from a competing community with which it is compared."

Other cases typical of the construction of Section 3 by the Commission are:

Consumers Co. v. C. & N. W. Ry. Co., 36 I. C. C. 259, 261:

"unjust discrimination under Section 3 of the act ordinarily requires that the prejudice suffered by one person shall be a source of positive advantage to another and that a competitive relation shall exist between the persons, localities, or commodities concerned."

In *California Walnut Growers Asso. v. V. & R. R. R. Co.*, 50 I. C. C. 558, 568, the Commission said:

"It is well settled that discrimination under the third section to be undue and unlawful must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored and that generally a competitive relationship between the commodities must appear."

Garratt-Callahan Co. v. A. C. L. R. R. Co., 88 I. C. C. 103, 106:

"Prejudice to be undue under Section 3 must ordinarily be such that the prejudice suffered by one person shall be *a source of positive advantage* to another and that a competitive relation shall exist between the persons or commodities affected. *Consumers Co. v. C. & N. W. Ry. Co.*, 36 I. C. C. 259; *Schlicher v. Director General*, 62 I. C. C. 181."

El Dorado Chamber of Commerce v. C., R. I. & P. Ry. Co., 89 I. C. C. 743, 744:

"The evidence introduced was confined to the rate situation. *Mere reference to a lower charge at other points is not sufficient to establish undue preference and prejudice.*"

Utah State Automobile Asso. v. A., T. & S. F. Ry. Co., 92 I. C. C. 376, 386:

"Undoubtedly there is here a preference, but the question is whether the preference is undue or unreasonable and results in any undue or unreasonable prejudice to complainant. The test, under the allegations of the complaint, is whether complainant suffers injury by reason of the preference."

Pensacola Chamber of Commerce v. L. & N. R. R. Co., 98 I. C. C. 567, 570:

"Disparity in rates does not necessarily result in undue prejudice. It must also appear that shipments are made under those rates or that shipments are hindered or prevented because of the rate relationship. *The element of competition is usually potent.*"

Detroit & Cleveland Nav. Co. v. M. C. R. R. Co., 102 I. C. C. 607, 609:

"In support of its allegations of undue prejudice and unjust discrimination complainant relies mainly on the fact that shippers at points of origin in lower Michigan are deprived of whatever benefits they might derive from differential rates while those located at Cleveland and Buffalo may avail themselves of such benefits. It cites *White Star Line v. N. Y. C. R. R. Co.*, 83 I. C. C. 473, wherein we found that the refusal of certain defendants to establish through routes and joint rates with the complainant therein was unduly prejudicial. But in that

case it was shown that the defendants participated in through routes and joint rates with a *competitor of complainant*, and the allegation of undue prejudice was clearly established. Prejudice is rarely undue unless the parties prejudiced and those preferred are upon a *competitive basis*. Complainant has made no showing that such a condition exists here; nor do the facts of record support the allegation of unjust discrimination."

And the Congress has acquiesced.

In this case, 113 I. C. C. 389, at p. 432 (R. 93), the Commission says:

". . . but specific consideration of the present interstate rates is unnecessary, for they will be changed under our findings herein.

". . . the conclusion is inevitable that the application of rates thereon (meaning on intrastate traffic) substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, *in some degree at least*, the unjust discrimination against interstate commerce . . . declared by the act to be unlawful." (Emphasis ours.)

The Commission thus finds the intrastate rates unjustly to discriminate not against existing rates complained of and not specifically considered, but against future rates which the Commission will prescribe, and which were prescribed long after any hearings were had. It also holds that the maintenance of the intrastate rates will bring about unjust discrimination "in some degree at least." Where "some degree" applies and where not, is not stated.

In *American Express Co. v. South Dakota*, 244 U. S. 617, at 625, 626, 61 L. Ed. 1352, at 1358, the Supreme Court said:

"For the power of the Commission is dominant only to the extent that the exercise is found by it to be neces-

sary to remove the existing discrimination against interstate traffic."

The Interstate Commerce Commission seeks to exercise "dominant" power beyond where there is any adumbration of unlawful discrimination.

SHREVEPORT CASES.

Beginning with what has come to be called the Shreveport Case, the courts have in certain cases sustained the power of the Interstate Commerce Commission to prescribe rates applicable wholly within a state. We do not question the legality or propriety of exercising that power when the facts justify. It is, however, an unusual power, one that should never be exercised unless fully authorized.

While the power of the federal government to regulate interstate commerce is paramount and must control, and that power in appropriate cases extends sufficiently far to protect interstate commerce from burden, the right to exercise the power must be clearly established and the burden on interstate commerce must be definite and substantial.

Since the original Shreveport Case the question has been presented to the Supreme Court in other cases, all of these cases being usually designated under the generic term "Shreveport Cases." We shall discuss such of those cases as appear to be sufficiently like the facts of this case to make such discussion helpful. All such cases recognize that wholly intrastate commerce cannot be regulated by the federal agency.

The germ of the idea which justifies and limits the Shreveport Cases was announced as early as 1824. Chief Justice Marshall, discussing the Commerce Clause in *Gibbons v. Ogden* (1824) 9 Wheat. 22 (U. S.) 1, says:

> "It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states. Such a power would be inconvenient, and is certainly unnecessary."

The first Shreveport Case had its beginning in a com-

plaint brought by the Railroad Commission of Louisiana against the St. L. S. W. Railway Company, the report of the Commission in which is found in 23 I. C. C. beginning at page 31.

Properly to understand the decision of the case by this Court and the principles established, the opinion of the Commission should be considered. It will be noted that the Commission points out, beginning at page 35, specific and definite acts of the authorities of Texas which preferred and avowedly preferred Texas shippers over shippers at Shreveport, in the State of Louisiana. The Commission specifically found, page 46, that rates out of Shreveport to named points in Texas were unjust and unreasonable and that lower rates than those found to be reasonable from Shreveport into Texas could not be maintained between such points in Texas without burdening interstate commerce. There was a definite finding based upon undisputed testimony that the agents of the State of Texas had deliberately, avowedly, and successfully placed a burden upon interstate shippers to their prejudice and to the advantage of Texas shippers.

When the matter came to this Court, under the title "*Houston East and West Texas Railway v. United States*, 234 U. S. 342," this Court, in giving the facts, stated and relied upon the same character of testimony that the Commission had found to exist. A few illustrations will be given:

Page 346: "It is undisputed that the difference was substantial and injuriously affected the commerce of Shreveport;"

"rates out of Shreveport to named Texas points;"

Page 347: "from cities in Texas to such points under substantially similar conditions and circumstances;"

"against Shreveport;"

"Shreveport to Dallas and Houston;"

and, p. 353, speaking of the law, and citing Employers Liability Cases, 207 U. S. 463, you pointed out that the first Employers Liability Act was held unconstitutional because it referred to employment which "had no connection whatever with interstate commerce." That is true certainly of a portion if not of all of the intrastate rates in Alabama.

And further showing the limitations on the power of Congress, you, at page 357, said:

> "Congress thus defined the scope of its regulation, and provided that it was not to extend to purely intrastate traffic. It did not undertake to authorize the Commission to prescribe intrastate rates, and thus to establish a unified control by the exercise of the rate-making power over both descriptions of traffic. Undoubtedly, in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier, and subject to the authority of the states, or of the agencies created by the states."

It is interesting and important to observe how careful this Court was in this initial case to limit the power of the federal agency and to protect the constitutional rights of the states.

This caution is further illustrated in the case of *Chicago, M. & St. P. R. Co. v. State Public Utilities Com. of Ill.*, 242 U. S. 333. There it was definitely held that unless there was proven a relationship between the rates of the state sought to be increased and the interstate rates sought to be imposed on the state, there was no power in the federal agency to act. At page 337 of the opinion, after calling attention to the paramount constitutional power of Congress and to the case of *Missouri Pacific R. Co. v. Larabee Flour Mills Co.*, 211 U. S. 612, you said:

> "But it was decided that Congress had not exercised this power by the enactment of the Interstate Commerce Act."

This means that the full constitutional power has not yet been exercised by the Congress. Showing these limitations, on the same page of the opinion you said:

> "It was proper for the Interstate Commerce Commission to consider the rate as part of a through rate from points outside of the state. It was equally proper for the State Commission to consider it as part of the intrastate haul, and we do not think the rates were so related as to exclude the exercise of jurisdiction by the State Commission."

In the case just cited the state rate was lower than the interstate rate but the court did not deem that sufficient proof, and said:

> "But a relation is asserted between the state and interstate haul because it is said to be manifest that the order of the State Commission gives commercial advantages to shippers and producers of coal in Illinois over shippers and producers outside of the state. But there is nothing in the record that justifies the confidence of the assertion. There are too many factors to be considered for such offhand declaration to be accepted. Some relation we may admit between the state and interstate service, but the evidence does not bring it within that certainty and precision of influence that induced the decision in *Houston E. & W. T. R. Co. v. United States*, 234 U. S. 342, but leaves it controlled by the *Minnesota Rate Cases, supra; Oregon R. & Nav. Co. v. Campbell*, 230 U. S. 525; and *Louisville & N. R. Co. v. Garrett*, 231 U. S. 298. Therefore, the order is not subject to the charges against it, and Secs. 3, 13, and 15 of the Interstate Commerce Act have no application."

A more striking case illustrating the limitations on the power of Congress to regulate intrastate rates and the care of this Court not to invade the rights of the state, is that of *American Express Company v. South Dakota*, 244 U. S. 617.

Using the pages of this opinion, we call attention to the limitations required by the Supreme Court:

Page 619: "Shippers of Sioux City, Iowa, complained;"

Page 620: "The report makes clear that the order applied only to competitive territory and that this is the southeastern section of South Dakota;"

Page 621: The proceedings sought "to enjoin them from putting into effect the special tariffs covering *all* their rates within the state;" (Emphasis in opinion.)

Page 623: "specified towns to which the rates are applied are named;"

Page 624: Speaking of the Commission's order "in its specific direction the order merely prohibits charging higher rates to and from Sioux City than to and from five South Dakota cities;"

Page 624: "But the finding that discrimination exists and that the interstate rates are reasonable does not necessarily imply a finding that the intrastate rates are unreasonable. Both rates may lie within the zone of reasonableness and yet involve unjust discrimination. *Interstate Commerce Commission v. Baltimore & O. R. Co.*, 145 U. S. 263, 277."

Page 625: "The territory to which it should apply;"

"to and from which rates must be changed;"

"The Commission's order can not serve as a justification for disregarding a requirement or order issued under state authority unless and except so far as it is definite as to the *territory or points to which it applies;*"

Page 625-6: "For the power of the Commission is dominant only to the extent that the exercise is found by it to be necessary to remove the existing discrimination against interstate traffic."

Page 627: "The express companies were not warranted by anything in the order in extending the special

> tariffs of rates to and from the five cities to include 'Points' in every part of the state. As to all rate advances other than those in the competitive territory, their action was unauthorized."

Under these circumstances this Court granted an injunction because the tariffs referred to *all* the rates in the state and were not limited to the *specific* rates as to which the pleadings and evidence justified a finding of discrimination.

It is definitely established by the authorities to which reference has just been made, that there must be a relation between the rates interstate and the rates intrastate, which the Interstate Commerce Commission may regulate. It is submitted that there was no such general relation shown in this case. As to about one-third of the movement intrastate in Alabama the rates are joint-line rates and are equal to or in excess of the single and joint-line rates established by the Interstate Commerce Commission. It is also definitely shown of record that as a result of the Interstate Commerce Commission's decision in the Meridian Case, 66 I. C. C. 179, four railroads, to-wit, Alabama Great Southern; Alabama, Tennessee & Northern; Mobile & Ohio, and Southern, as to certain stations had at the time of the decision of the Interstate Commerce Commission in this case rates as high or higher than as fixed by the Interstate Commerce Commission and it was also shown that the Illinois Central intrastate in Alabama was treated as a weak line, and because of such consideration had rates as high or higher than the rates prescribed by the Interstate Commerce Commission in this case, and it will be noted further in the statement of the testimony in the Appendix hereof, pp. 19-20, that there is practically no testimony as to the condition and relative rates of the short lines in Alabama.

In the case now before this Court there is no definite naming of any cities that are competitive; if there were, to

that extent the Commission's order might be valid unless invalid for other reasons herein discussed, but certainly in the absence of any specific findings and in the absence of any definite limitations in the tariffs, the orders of the Interstate Commerce Commission are void.

In *American Express Co. v. South Dakota*, 244 U. S. 617, 625, this Court held that there must be definiteness in the findings and order, and said:

> "Where, as here, there is a conflict between the Federal and the State authorities, the Commission's order cannot serve as a justification for disregarding a regulation or order issued under state authority *unless, and except so far as, it is definite as to the territory or points to which it applies.* For the power of the Commission is dominant only to the extent that the exercise is found by it to be necessary to remove the existing discrimination against interstate traffic." (Emphasis ours.)

This rule was quoted and followed in *Illinois Central R. Co. v. Public Utilities Com.*, 245 U. S. 493, the report there dealt "with the intrastate rates in so far only as they result in discrimination against interstate traffic to and from St. Louis and Keokuk." The complaint and evidence here deal with only a few points. There it was said (p. 509):

> "To be effective in respect of intrastate rates established and maintained under state authority an order of the Commission of the kind now under consideration must have a definite field of operation, and not leave the territory or points to which it applies uncertain."

After quoting as above from the South Dakota Case, the conclusion was:

> "We conclude that the uncertainty in this order is such as to render it inoperative and of no effect as to the intrastate rates established and maintained under a law of the

state, and therefore, that the suits by the carrier were rightly dismissed on merits."

See rule of Strict Construction, p. 510.

In *Railroad Commission of Wisconsin v. Chicago B. & Q. R. Co.*, 257 U. S. 563, Section 15a as well as Section 3 of the Act was involved. In the case at bar Section 3 is the section claimed to have been violated. The order there was held to be void under Section 3, but was sustained under Section 15a. There, after discussing former Shreveport Cases, the Chief Justice said (p. 579):

> "The order in this case, however, is much wider than the orders made in the proceedings following the Shreveport and Illinois C. R. Co. Cases. There, as here, the report of the Commission showed discrimination against persons and localities at border points, and the orders were extended to include all rates or fares from all points in the state to border points. But *this order is not so restricted. It includes fares between all interior points, although neither may be near the border, and the fares between them may not work a discrimination against interstate travelers at all. Nothing in the precedents cited justifies an order affecting all rates of a general description when it is clear that this would include many rates not within the proper class or the reason of the order.* In such a case, the saving clause by which exceptions are permitted cannot give the order validity. As said by this court in the Illinois Central R. Co. case: 'It is obvious that an order of a subordinate agency, such as the Commission, should not be given a precedence over a state rate statute, otherwise valid, unless, and except so far as, it conforms to a *high standard of certainty.*' See also *American Express Co. v. South Dakota*, 244 U. S. 617.
>
> "If, in view of the changes, made by Federal authority, in a large class of discriminating state rates, it is necessary from a state point of view to change non-discrimination state rates to harmonize with them *only*

> *the state authorities can produce such harmony. We cannot sustain the sweep of the order* in this case on the showing of discriminations against persons or places alone." (Emphasis ours.)

And as showing the limits of the power of the Interstate Commerce Commission (pp. 590, 591):

> "It (this power) does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to Interstate Commerce."

It is interesting to contrast the Wisconsin Case with this. There (see ex parte 74, Increased Rates 1920, 58 I. C. C. 237), the Western carriers to earn the standard return needed $401,215,984 but received only $265,185,254. Here the Southern carriers earned in excess of the standard return. This testimony of complainant Alabama Public Service Commission might have been, but was not, explained or denied. The form of the order in the Wisconsin Case was similar to these here but the substance of the testimony and the finding there are unlike these here.

How carefully this Court has observed these limitations appears from all its Shreveport Cases. To refer again to the Illinois and Wisconsin Cases:

In 245 U. S. 493, the Illinois Case, *supra*, the power to regulate intrastate commerce was limited to those rates which resulted in unlawful discrimination against interstate traffic to and from St. Louis and Keokuk, and it was stated by the court that the order of the Commission *"must have a definite field of operation."*

The Wisconsin Case, 257 U. S. 563, *supra*, so far as Section 3 was involved, is legally identical with the case now before the court. There the order of the Interstate Commerce Commission was based upon two grounds; one, Section 3, as is the order in this case, and the other, Section 15a which is not involved here. This Court said that under Section 3 the order of the Interstate Commerce Commission was void, but sustained it under Section 15a. The application of this principle means that the order in this case is void. It will be noted from the quotation, ante, that in the Wisconsin Case it was held, "We cannot sustain the *sweep of the order in this case on the showing of discrimination against persons and places alone*," and, further, this Court said the Congressional grant of power did not involve general regulation of intrastate commerce and that there must be substantial reasons for exercising that power.

Further emphasis of this care of this Court and the limits which it has placed upon the rule of the Shreveport Cases appears in *Arkansas Railway Company v. Chicago R. I. & P. R. Co.*, 274 U. S. 597. The principles are summed up, cases cited and in concluding the opinion, it was said:

> *"The intention to interfere with the state function of regulating intrastate rates is not to be presumed.* Where there is a serious doubt whether an order of the Interstate Commerce Commission extends to intrastate rates, *the doubt should be resolved in favor of the state power.* If, as the railroad believed, the federal commission intended to include the intrastate Arkansas rates within its order, it should have taken action, through appropriate application, to remove the doubt by securing an expression by that Commission of the intention so to do. Compare *American Express Co. v. South Dakota*, 244 U. S. 617, 627, 61 L. Ed. 1352, 1359, P. U. R. 1917F, 45, 37 Sup. Ct. Rep. 656; *Illinois C. R. Co. v. State Pub. Utilities Commission*, 245 U. S. 493, 509, 510, 62 L. Ed.

425, 438, P. U. R. 19180, 279, 38 Sup. Ct. Rep. 170." (Emphasis ours.)

But appellees contended below and probably will here that Section 15a authorizes the orders complained of. The answer to such claim is that there was neither pleading nor testimony supporting any finding under Section 15a nor is it apparent that the Commission made any such finding. We are aware that pleadings before the Commission are not technical but there must be some pleadings and substantial evidence. It is true that the law need not be pleaded (*Chicago R. I. & P. Ry. v. United States*, 274 U. S. 29) but the rules of the Commission require such definite statement of violations as fairly will inform the respondents what violations of law are charged. Certain sections were pleaded (Section 3 and Paragraphs 3 and 4 of 13) and thus the issues are limited. *Expressio unius est exclusio alterius.* We are justified especially in view of the high annual earnings of Southern carriers shown of record to be 5.88 per cent, in assuming that such carriers did not desire to make an issue under Section 15a. Later, we shall discuss the application of the due process clause of the Fifth Amendment. Here we call attention to rules applicable to this as well as the issue later to be discussed. The Alabama Public Service Commission was charged with notice of a complaint under Section 3. Section 13 is but a rule of procedure, and no order could be valid broader than the complaint. *Washington etc. R. Co. v. Fairchild*, 224 U. S. 510, 525, 526. The Commission itself in *Schlicher v. Director General*, 62 I. C. C. 181, 184, 185, said:

> "Complainants have never sought leave to amend their complaint to broaden the issue it originally stated, or to make the issue conform to the proof. While it is not our policy to be unduly technical in the matter of pleadings, Rule III, Paragraph (m), of the Rules of Practice provides that—

"In case undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage, in violation of Section 3 is alleged, the particular person, company, firm, corporation, locality, or description of traffic affected thereby, and the particular preference or advantage, or prejudice or disadvantage, relied upon as constituting such violation, should be clearly specified.

"That rule is applicable generally to all proceedings before us. Here we are acting in a quasi-judicial capacity. *Mitchell Coal Co. v. Penna. R. R. Co.*, 230 U. S. 247; *Cattle Raisers' Asso. v. C., B. & Q. R. Co.*, 10 I. C. C. 83, 91."

Had there been pleading there was no evidence. Contrast the evidence in the Shreveport Cases in which this Court has permitted under Section 3 the Commission to regulate intrastate rates with this record. Likewise contrast with this record the record in the Wisconsin Case where an order under Section 15a was sustained. The only testimony on the subject showed that the carriers were earning when this case was heard more than they should under Section 15a. (See exhibit 476, R. 832, *et seq.*) In summary sheet 10, this exhibit shows the following as the average percentage of return:

	1920 (4 mos.)	1921	1922	1923
Eastern District	0.97 (Dr)	3.80	5.09	6.89
Southern District	0.84	3.28	5.27	5.88
Western District	1.38	3.69	4.16	6.46

It is true that some of the factors used in arriving at these figures were the best judgment of the witness and may be subject to change, but the carriers here defendant with full information in their possession, did not choose to contest these conclusions.

(C) THE INTERSTATE COMMERCE COMMISSION HAS NO CONSTITUTIONAL POWER TO DECREASE INTRASTATE RATES.

I. APPLICABLE FACTS.

The Commission in the Meridian Case, 66 I. C. C. 179, 187, prescribed rates on fertilizers into Alabama higher than the general intrastate rates and these interstate rates became the rates intrastate on the Alabama Great Southern, the Alabama, Tenn. & N. R. Corp., the Mobile & Ohio, and the Southern Railway Company in Alabama.

The Illinois Central Railroad, as already stated, was conceded intrastate in Alabama rates higher than the interstate rates prescribed.

The witness Drescher testified that the scale of rates prescribed in July, 1924, by the Alabama Commission does not apply from Birmingham to stations on the Alabama Great Southern Railway between Birmingham and Meridian and that the disparities as between state and interstate rates shown in his exhibits do not exist in the rates from Birmingham, Ala., against Meridian, Miss., to stations on the Alabama Great Southern Railway between these points; that such rates are more nearly in line one with the other due to the order of the Interstate Commerce Commission in the Meridian Case (R. 462-467, Appendix 16-17).

Exhibit No. 181 (461) shows the present rates on fertilizer from Birmingham, Ala., and Meridian, Miss., to points on the Alabama Great Southern Railroad between those cities, and the rates for corresponding distances on basis of the Third Royster Scale. The present rates are on the whole slightly lower than the rates shown in the Third Royster Scale.

The witness Drescher testified that an inconsistent and anomalous situation existed in the present adjustment of rates on fertilizer in Alabama in connection with the rates from Montgomery to certain stations on the Mobile & Ohio Rail Road and from Birmingham to stations on the Alabama Great

Southern Railroad located in so-called Meridian territory; that the Alabama scale is not applied from Montgomery to stations on the Mobile & Ohio Rail Road west of Tuscaloosa, or from Birmingham, Ala., to various stations on the Alabama Great Southern Railroad west of Tuscaloosa because of the order of the Interstate Commerce Commission in the Meridian Case (R. 462-467). The rates which have direct application from Montgomery over the Mobile & Ohio Rail Road and from Birmingham over the Alabama Great Southern Railroad to stations on those lines west of Tuscaloosa are higher than the joint-line scale prescribed by the Alabama Commission applicable over the Louisville & Nashville Railroad in connection with the Mobile & Ohio Rail Road or the Alabama Great Southern Railroad via Tuscaloosa.

The Commission in its order in this case (113 I. C. C. 425, R. 83, 84) made lower rates than these intrastate rates.

ARGUMENT AND AUTHORITIES.

The Interstate Commerce Commission has no constitutional power to regulate rates on intrastate commerce which rates benefit *interstate* commerce. This authority exists only when there is a burden on interstate commerce. See *Gulf Refining Company v. Southern Railway Company*, 102 I. C. C. 274, 276, for an obviously correct statement of the principle.

II. THE ACTS TO REGULATE COMMERCE DENY POWER TO PRESCRIBE RATES ON TRANSPORTATION WHOLLY WITHIN ALABAMA.

(A) and (B). Sub-paragraphs (A) and (B) under Paragraph I above present the arguments and facts applicable to this proposition. The only difference is that there is discussed the claim that the orders complained of violate the commerce clause of the federal constitution and

here the discussion relates to the claim that the orders are in violation of Section 1, Paragraph 2, Sub-paragraph (a) of the Interstate Commerce Act which reads:

> "The provisions of this Act . . . shall not apply—(A) To the transportation of passengers or property or to the receiving, delivering, storage or handling of property wholly within one state and not shipped to or from a foreign country from or to any place in the United States . . ."

ARGUMENT AND AUTHORITIES.

In *Houston etc. R. Co. v. United States*, the Shreveport Case, 234 U. S. 342, 357, this Court copied the limitation stated in the above statute and said:

> "Congress thus defined the scope of its regulation, and provided that it was not to extend to purely intrastate traffic. It did not undertake to authorize the Commission to prescribe intrastate rates, and thus to establish a *unified control* by the exercise of the rate-making power over both descriptions of traffic. Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier, and subject to the authority of the states, or of the agencies created by the states. This was the question recently decided by this court in the Minnesota Rate Case (*Simpson v. Shepard*), 230 U. S. 352, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729. There, the State of Minnesota had established reasonable rates for intrastate transportation throughout the state, and it was contended that, by reason of the passage of the act to regulate commerce, the state could no longer exercise the state-wide authority for this purpose which it had formerly enjoyed; and the court was asked to hold that an *entire scheme of intrastate* rates, otherwise validly established, was null and void because of its effect upon interstate rates. There had been no finding by the Interstate Commerce Commission of any unjust *discrimination*."

Here, as the facts stated above show, no violation of Section 3 exists, certainly as to some of the transportation "wholly within" the State of Alabama; and, unless mere proof of a difference in the measure of rates interstate and intrastate gives power to the Interstate Commerce Commission to regulate intrastate rates in Alabama, the orders complained of exceed the limits of the authority conferred on that Commission. Because Alabama rates on one-third of the traffic are equal to or in excess of interstate rates, and that in addition to this third of the traffic on five roads in the state the interstate rates are higher than intrastate rates is no justification or power to the Interstate Commerce Commission to regulate all intrastate rates. Mere difference is not unlawful.

The statute shows that there is a residuum of power in the states but if the orders in this case are valid there is no power whatsoever left in state agencies over intrastate rates. Such a conclusion violates the Tenth Amendment to the Constitution which reserves to the states undelegated powers. It must be remembered that the limitation quoted above was in the original act and has not been repealed or materially changed by subsequent amendments. It would be interesting if appellees will point out what power the orders in this case leave the Alabama Public Service Commission with reference to the rates involved and further to point out any testimony that shows that all the intrastate rates in Alabama on fertilizers and fertilizer materials constitute any violation of Section 3 of the Act or so project their influence as to burden rates on transportation not wholly within one state. Certainly appellees cannot contend that even were there pleadings or issues to sustain their position that there is testimony that all or any state rates burden interstate commerce in violation of Section 15a. This record shows (R. 672, 819, 826, Appendix 26) that short line roads in Alabama have truck competition not met on the larger interstate hauls. This "distin-

guishes the transportation conditions . . . and removes it from the purview of Section 3 of the Act." *Caddo etc. Oil Co. v. Kansas City Southern Ry. Co.*, 98 I. C. C. 39, 42. If the short line roads are compelled to increase rates to the interstate level the trucks will haul the freight and both interstate and intrastate revenues in the aggregate will be less. It is not only in violation of the statute but actually injurious for the federal agency to regulate *all* rates intrastate merely because some intrastate rates may be lower than interstate rates. To sustain the orders complained of repeals Sub-paragraph (A) of Paragraph 2 of Section 1 of the Act to Regulate Commerce, and, so far as the regulation of the charges of railroads, reduces state commissions to a condition of helpless desuetude.

(C) SPECIFIC ALLEGATIONS OF VIOLATION OF SECTION 3 AND PARAGRAPHS 3 AND 4 OF SECTION 13 DO NOT RAISE AN ISSUE UNDER SECTION 15A.

STATEMENT.

The complaint against the rates in Alabama specifically charged violation of Sections 3 and 13 and did not name Section 15a (R. 206, Appendix 34). The order of investigation did not name 15a (R. 207), Appendix 34). There was no testimony that the carriers were earning less than the standard rate of return but the record shows that southern carriers were earning in excess of such standard, to-wit, 5.88 per cent. The discussion relates to this proposition and need not be repeated.

III. DUE PROCESS OF LAW DENIED.

(A) STATE RATES WERE ALLEGED TO PREJUDICE INTERSTATE SHIPPERS BECAUSE DIF-

FERING FROM EXISTING INTERSTATE RATES, AND WERE FOUND DISCRIMINATORY OF INTERSTATE RATES LATER PRESCRIBED.

STATEMENT OF FACTS.

On July 30, 1924, the carriers complained that the Alabama rates established May 26, 1924, and made effective July 25, 1924, were "lower than the level of interstate rates (then) applying from points in other States to Alabama destinations" (R. 195 and 200, par. 12, Appendix 6). In preceding paragraphs of this complaint (6-11) the carriers described how the interstate rates were made and in Paragraph 13 specifically alleged wherein such interstate rates were unduly prejudiced by the Alabama rates (R. 196).

At the time this complaint of the carriers was filed and when it was heard and argued, there were both intrastate and interstate rates higher for joint line than for single-line hauls. No party to the complaint sought to change the rule prescribing higher rates for joint-line hauls than for single line hauls. On this point the Commission (113 I. C. C. 422, R. 80, Appendix 32) said: "Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint-line than for single-line hauls." Disregarding this acquiescence, the Commission adopted on interstate hauls the same scale of rates for joint and single-line hauls (113 I. C. C. 423, R. 81, Appendix 32), saying:

> "Manifestly when no additions are allowed for joint-line service and when short-line distances are used as a measure the single-line scale should be correspondingly increased . . . . . Under no circumstances the elimination of joint line arbitraries will require a comparatively small increase in the single-line scale."

The Alabama rates required a carload minimum 5 tons higher than the interstate rate alleged in the complaint to be prejudiced (113 I. C. C. 432, R. 63).

The Commission (113 I. C. C. 425, R. 83) prescribed July 19, 1926, a new and entirely different scale for interstate application, with a higher minimum than formerly applied, specified certain rates intrastate in Alabama, compared them with the newly established interstate rates (113 I. C. C. 431, R. 83, 86, Appendix 29), and found that:

> "While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful." (R. 93.)

ARGUMENT AND AUTHORITIES.

The Fifth Amendment to the Constitution of the United States and the Act to Regulate Commerce give the right to a full hearing and as said by this Court, *Interstate Commerce Commission v. Louisville & N. R. Co.*, 227 U. S. 88, orders of the Commission are void "If a hearing was denied; (or) if that granted was inadequate or manifestly unfair."

It is submitted that where the hearing relates to the relationship of one to another rate and when a relation is established between the one rate and an entirely different rate never before the Commission nor known to the parties, that the hearing is "inadequate and manifestly unfair."

The issue was that rates A existing in Alabama were unduly prejudicial to shippers using rates B on interstate shipments; the order was that rates A were unduly prejudicial to rates X established two years after the issue was made.

While we do not question the right of the Interstate Commerce Commission in the interstate rates involved to fix specific rates, we do insist that a state's rates can never be regulated by the federal agency until there is a specific comparison and hearing and testimony as to the rates interstate with which the state rates are contrasted. The complaint of the trunk line carriers said that the relation of rates of July 30, 1924, unduly preferred the state rates in Alabama and unjustly burdened interstate commerce. The Commission found that the rates it conceived to be reasonable two years later, in July, 1926, created a relationship between interstate and intrastate rates that burdened the former. The issue made was not the same as the issue decided. On the issue decided there has never yet been any hearing or any testimony. This principle is followed by the Commission itself. *Virginia v. A. & R. R. R.*, 136 I. C. C. 173.

In *Illinois Central R. Co. v. R. R. Com. of Kentucky*, 1 F. (2d) 805, a state commission's rates were sought to be set aside. There, as here, there had been no hearing as to the particular rate nor as "to the conditions existing in July, 1922, when the order now in question was made" (p. 806). There "the railroad had no knowledge until the opinion of the Commission was filed" as to the particular rate. Here the Alabama authorities "had no knowledge until the opinion of the Commission was filed" July 19, 1926, as to the particular interstate rate which in said opinion was made the absolute measure of the Alabama intrastate rates. The court there, at page 806, said:

> "The question whether interstate rates are discriminatory as between shippers is one of which the courts have now no jurisdiction. There must be a hearing on that subject before the Interstate Commerce Commission and a finding by it. *Texas Co. v. Abilene Co.*, 204 U. S. 426, 440. We see no reason for any different rule as to discrimination between interstate and intrastate rates.

We think the Transportation Act contemplates that an intrastate rate should be condemned for this reason only after there has been such a hearing and such a finding, not only of discrimination, but of *undue discrimination;* and such has been the practice. *Railroad Commission of Wisconsin v. Chicago Co.*, 257 U. S. 563; *United States v. Tennessee*, 262 U. S. 318. *Ex Parte* 74 *cannot take the place of such a hearing and finding; it neither pertains to intrastate rates nor to the conditions existing in July*, 1922, *when the order now in question was made.* . . . "The case is analogous to that considered in *Florida, etc. Co. v. U. S.*, 234 U. S. 167, 185, 186. 'The inquiry narrows itself to the mere consideration of' the testimony which the commission selected as that upon which it planted its order, and the commission should be treated as justifying its conclusion only by comparison with those schedules. So far as the record shows, these were not put in evidence or in any way referred to at the hearing, and the *railroad had no knowledge until the opinion of the Commisson was filed*, that these Cairo south-bound rates were claimed to have any bearing on the issue. The natural inference from the record is that these schedules were on file with the Commission pursuant to the general provisions of the law, and that it thought itself entitled to resort to them and base its conclusion thereon, merely because it had knowledge of them in this way. It was decided in *Interstate Commerce Com'n. v. L. & N. R. Co.*, 227 U. S. 88, 93, that a Commission cannot base a finding upon the schedules and other general information which it has in its files, unless they were put in evidence in the particular proceeding, and opportunity given to the railroad to meet and explain them. This same general rule was stated and applied in *U. S. v. L. & N.*, 235 U. S. 314, at page 321, and the *Florida, etc. Co. Case, supra*, gives us an instance of the kind of proof that has superficial force, but is not considered substantial enough to support a commission's findings." (Emphasis ours.)

As stated in the New England Divisions Case, *Akron, C. & Y. R. v. U. S.*, 261 U. S. 184, 200:

"A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of *the step asked to be taken.*" (Emphasis ours.)

(B) THERE ARE NO PLEADINGS OR EVIDENCE JUSTIFYING A FINDING UNDER SECTION 15A.

STATEMENT.

The facts, authorities, and arguments ante 55, apply to this proposition.

In *Baltimore & Ohio R. Co. v. United States, ad. pam.*, 277 U. S. 281, 301, decided May 21, 1928, this Court dealing with a similar principle said:

"There was no evidence to show the amount of revenue required to pay operating expenses, taxes and a fair return on the property of appellee lines or that their rates were not adjusted or were not sufficient to cover the transfer charges in question. There was nothing to support a finding that it is or will be unjust or unreasonable for the appellee lines to bear the cost of transfer of the westbound through traffic. The order cannot be sustained. *Florida East Coast R. Co. v. United States*, 234 U. S. 167; *Louisville & N. R. Co. v. United States*, 238 U. S. 1."

(C) DIFFERENCE IN RATES FOR JOINT AND SINGLE-LINE HAULS NOT OBJECTED TO CANNOT WITHOUT TESTIMONY BE DESTROYED.

STATEMENT.

The interstate rates in effect when the complaint was filed and the investigation ordered was a system of rates differentiating in charges between joint and single-lines. The

intrastate rates prescribed such differentials. All parties acquiesced in this system of making rates. There is a difference in cost between hauls over joint-lines and hauls over a single line.

ARGUMENT AND AUTHORITIES.

One of the special conditions in this case is that both the carriers and the shippers urged as to the interstate rates that there be a higher rate when the movement was over two or more lines than when the movement was over one line. Not only were these the contentions of the respective parties, but there was no testimony whatsoever relating to a one set of rates applicable both over single lines and two or more lines, what Mr. Price, of the Georgia Commission, said in argument after hearing relied on by appellees, is not evidence.

The Commission finds that all parties acquiesced in a joint-line scale and that finding is conclusive, being supported by testimony with nothing testified, as we believe, to the contrary. If, as defendants contend, there was some testimony favoring a single-line scale, such fact would not override the finding of the Commission. The Commission prescribed a single set of rates applicable to interstate transportation and sought by its orders of October 3, and of December 22, 1927, to impose this character of rates intrastate in Alabama (R. 24, 225). We are not here attacking the interstate rates when applied interstate. When, however, those rates are sought to be imposed intrastate, we say that there is inadequate proof to justify such interstate rates as a measure of intrastate rates.

In Investigation of Alleged Unreasonable Rates on Meats, 23 I. C. C. 656, 661, the Commission said:

> "That addition for a two-line haul is somewhat akin to that for a terminal service. A mileage scale ordinarily yields a much higher rate in proportion for a short haul

than for a long one; and when, therefore, two short hauls are combined, it is usually unjust to require the two carriers to accept compensation at the rate per mile applied for the entire long haul. To a degree they are entitled to a higher rate, in consideration of the fact that their individual hauls are short. Now, as distance increases the force of this consideration decreases. When distances of over 500 miles are involved, the fact that the service is by two lines is largely negligible."

Following this case and quoting the above language in *Hayden Bros. v. Railway*, 39 I. C. C. 94, 106, the Commission said:

"What was there said of a two-line haul will equally apply to a three-line haul."

Northwestern Cooperage & Lumber Co. v. M. & St. P. etc. Ry. Co., 43 I. C. C. 629, 632, held:

"Other things being equal, the rate for a two-line haul may properly be higher than the rate for a one-line haul, and the rates involved do not appear to exceed the rate sought by more than a reasonable switching charge."

The rule has in this territory been applied to fertilizer rates. In *Meridian Fertilizer Factory v. A. & S. Ry. Co.*, 33 I. C. C. 160, 163, the Commission said:

"The Commission has on various occasions recognized that it is just and reasonable for two or more independent lines, not part of the same system, but making up a through route, to charge a somewhat higher rate for a two-line haul than would be deemed reasonable for a single-line haul of equal distance. In *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C. 520, we established a schedule of class rates to apply between points in Oklahoma and points in Texas and in that case fixed certain arbitraries by which the rate for the two-line haul might exceed the one-line haul. On Class E, which in the absence of commodity rates applied on fer-

tilizer, we allowed a 2-cent higher rate for a haul over two lines. The same principle has been applied in other cases, and we see no reason why it should not be applied in the instant case.

"Upon consideration of all the facts of record we are of the opinion and find that the present single-line rates on acid phosphate from Shreveport to the destinations involved are not shown to be unreasonable . . .

"We find, however, that defendants' present rates for a haul over two or more lines are unreasonable, and subject to the same limitations as to the relative maximum rate, we find that rates for a haul over two or more lines should not exceed those for a haul of like distance over a single line by more than 2 cents per 100 pounds."

While there is no evidence in the case at bar that would furnish a basis for finding the extent by which a rate over two or more lines should exceed the rate over one line, there is certainly a higher cost and thus a justification for a higher rate over the joint lines-haul. The situation is similar to *Illinois Central R. Co. v. Railroad Commission of Kentucky*, 1 F. (2d) 806, *supra*, where it was said:

"All concede that the ton mile rate should be higher on a short haul (here joint-line haul), but how much higher there is no proof."

In *Memphis Freight Bureau v. Illinois Central R. Co.*, 27 I. C. C. 507, 517, referring to certain rate comparisons, the Commission said:

"It is to be noted, however, that the rates cited are for hauls over one line only. Under these state scales the rate for a haul over two lines is the sum of the rates for each line separately minus 10 per cent."

In prescribing rates in this case, p. 518, the rates were higher "for a haul over two or more lines."

Evidence and authority and the acquiescence of all parties, all show a difference in cost when two or more roads are involved over that when only one performs the transportation service. The evidence, admissions, and these authorities the Commission ignored, seemingly assuming the right without evidence or pleading, and contrary thereto, to balance charges and strike a medium. Generally the Alabama intrastate rates are for short hauls over one line and, therefore, should be lower than interstate rates over two or more lines. How much lower "there is no proof."

IV. THE ORDERS SOUGHT TO BE SET ASIDE ARE ARBITRARY AND UNJUST.

(A) THE CARRIERS HAVE DISCRETION TO CHARGE LESS THAN THE INTERSTATE RATES WHILE THE INTRASTATE RATES ARE MINIMUM RATES.

STATEMENT OF FACTS.

By the order of October 3, 1927 (R. 25), the Commission directed that intrastate rates in Alabama should "be not less, for corresponding distances than the rates contemporaneously applied by said carriers in *accordance* with our order (fixing interstate rates) of July 19, 1926." The order of July 19, 1926, required the carriers to make rates not in excess of those prescribed (R. 118). This order of July 19, 1926 (113 I. C. C. 427, 428, R. 86, 87, 88), authorized certain group rates (R. 87) and excepted from the interstate rates certain rates in the Mississippi Valley and from the Ohio and Mississippi Rivers. These groups nor these exceptions can be applied in Alabama which is not in the Mississippi Valley, nor does it touch either of said rivers. So the rates intrastate are "in accordance with" the order of July 19, 1926, fixed on the scale without exception and can not be less. If the carriers follow the authority of that order they may make by

groups and otherwise lower rates per mile interstate than intrastate yet the intrastate rates can not be changed accordingly either by the Alabama Public Service Commission or the carriers in the State of Alabama.

ARGUMENT.

It can and probably will be argued that while the intrastate rates are fixed and discretion left with the carriers as to interstate rates, that when the carriers exercise their discretion applications may be made to the Commission for a modification of its orders relating to intrastate rates. The answer to such argument is that this action is directed to an order that unfairly prejudices intrastate shippers and that if the Interstate Commerce Commission has authority to change its order it has not done so and to concede to it such authority is to deprive the state agency of all power over intrastate transportation.

(B) IMPORT RATES LEFT ON A GROUP BASIS DEPRIVE INTRASTATE SHIPPERS IN ALABAMA OF THE ADVANTAGES OF THEIR LOCATION NEARER THE PORT OF MOBILE.

STATEMENT.

Import rates from New Orleans interstate are grouped with such rates from Mobile disregarding largely the differences in mileage (113 I. C. C. 428, R. 88). Many fertilizer materials are imported. The interstate shipper gets import rates from the further distant ports as low in some instances as the state shipper gets for the shorter haul from his home port (R. 283, 284, 317, 387, 425, 453, 498, 618, 622, 650, 667, 706, 736, 795, 903).

ARGUMENT.

This and the similar discussion IV-A above show why in fairness as well, we believe, as under the law, the Interstate Commerce Commission should confine itself to the regulation of such interstate rates only as from all the surrounding facts and circumstances give the intrastate shipper an undue advantage over the interstate shipper. By attempting, as was done here, to regulate intrastate rates in mass the Commission has possibly removed advantages enjoyed by some shippers intrastate but has certainly unduly burdened other intrastate shippers.

(C) *SHORT LINES* IN ALABAMA DO NOT GENERALLY IF AT ALL, COMPETE WITH INTERSTATE CARRIERS BUT DO HAVE TRUCK COMPETITION WHICH DOES NOT AFFECT INTERSTATE CARRIERS.

STATEMENT.

The short lines as a whole earn less than reasonable revenues but there is no evidence as to the earning of particular short lines in Alabama (R. 588) except one which earned 10% (R. 590). These short lines did not join in the original complaint of July 30, 1924, although the complainants prayed "on their own behalf and on behalf of all carriers operating in the State of Alabama." Later the short line roads did ask that the order of July 19, 1926, be extended to them and without further hearing that was done by the Commission necessitating an amendment to the bill of complaint herein (R. 219 *seq.*). There is truck competition for short hauls in Alabama (R. 672, 819, 826).

ARGUMENT AND AUTHORITIES.

Short lines having truck competition are situated differently from interstate lines with hauls long enough to make

trucking impracticable. This differentiates the two classes of transportation. *Caddo etc. Oil Corp. v. Kansas C. & R. Co.*, 98 I. C. C. 39, 42.

V. THE RECORD DISCLOSES THAT PARTS OF THE ORDERS COMPLAINED OF ARE WITHOUT SUPPORT IN LAW OR FACT AND THIS MAKES THE ORDERS COMPLAINED OF ARBITRARY AND UNJUST.

STATEMENT.

This record shows that the Commission consolidated cases involving interstate rates throughout southern territory with cases involving intrastate rates in South Carolina, Georgia, and Alabama, and that the Alabama case was given only incidental consideration. That some intrastate rates in Alabama do not compete with and cannot burden interstate shippers or interstate commerce. That the rates interstate in effect when the complaint was filed, which rates it was pleaded bore an unfair relationship to the intrastate rates, were changed and new interstate rates substituted as to the relationship of which new rates to the intrastate rates there was no pleading and there has been no hearing. These new interstate rates were on a different carload minimum and a different basis as to joint and single-line hauls from the interstate rates in force when the complaint was filed and heard. That the rates intrastate were on the same basis so far as joint and single-line as the interstate rates set up in the complaint and that while this basis was "acquiesced" in by shippers and carriers alike the basis was changed without any testimony in the new rates established by the Commission. That exceptions to the rates fixed were prescribed on interstate rates which could not be applied intrastate. That intrastate shippers are deprived of the advantages of short hauls on import traffic while placed on the same mileage scale as

the interstate rates on domestic traffic. That competition with trucks exists on some intrastate traffic which does not apply to interstate traffic. That state rates are minimum while interstate rates are maximum rates. That some intrastate rates fixed as a result of the order of the Interstate Commerce Commission in the Meridian Case were higher than the rates interstate. That the carriers were shown without dispute to be earning more than the standard rate of return, to-wit, 5.88 per cent.

ARGUMENT AND AUTHORITIES.

The right of states to regulate their local rates can be denied only when such right is so exercised as in effect to be a substantial regulation of interstate commerce. Speaking of the commerce clause, in *Gibbons v. Ogden, supra*, it was said:

> "It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states. Such a power would be inconvenient, and is certainly unnecessary."

Here, as in *Chicago, M. & St. P. R. Co. v. State Public Utilities Com. of Ill.*, 242 U. S. 333, there is some relation "between the state and interstate service, but the evidence does not bring it within that certainty and precision of influence that induced the decision in *Houston, E. & W. T. R. Co. v. United States*, 234 U. S. 342."

In the Wisconsin Case, 257 U. S. 563, 580, this Court quoted:

> "It is obvious that an order of a subordinate agency, such as the Commission, should not be given a precedence over a state rate statute, otherwise valid, unless, and except so far as, it conforms to a *high standard of certainty*."

In *Arkansas Railway Company v. Chicago, R. I. & R. Co.*, 274 U. S. 597, this Court resolved the doubts "in favor of the state power." The hearing was inadequate and in the orders of the Commission we submit that there has been manifest unfairness.

It is respectfully submitted that the orders of the Interstate Commerce Commission here involved should be enjoined and annulled as prayed.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

NO. 166

THE STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION,

APPELLANTS

vs.

THE UNITED STATES OF AMERICA, ATLANTIC COAST LINE RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, ET AL.

APPENDIX TO BRIEF OF APPELLANTS.

APPENDIX

The purpose of filing this appendix is to place before the court conveniently and logically all the facts necessary to an understanding of the issues on this appeal. This is done because as appellants believe and have repeatedly urged both before the trial court and in this court that much that is unnecessary is in the record. References are made to pages of the printed record so that our statement of facts can easily be tested to see whether or not sufficient of the record is embodied in this Appendix.

The Investigation Out of Which Grew the Order Complained Of

The Alabama rates complained of were after hearing prescribed by the Alabama Public Service Commission July 25, 1924 (R. 443). The order of the Commission instituting the investigation is dated October 7, 1924 (see 113 I. C. C. 392, R. 36, 37, 105), but this order (copied in full in the record, pp. 105, 106) while probably suggested by the complaints of carriers, was begun on the motion of the Commission itself. The Commission in its opinion described its order (R. 36, 37, 113 I. C. C. 392) and, after referring to evidence of general dissatisfaction with the fertilizer rates and stating that the investigation was "upon our own motion", described the proceeding as a general investigation:

> ". . . into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, . . . with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises."

Testimony was later taken. This testimony reduced to narrative form is in the record. Much the greater part, however, thereof dealt with rates other than these wholly within the State of Alabama, and Appellants presented as a compliance with Equity Rule 75 a narrative of what their counsel believe is all relevant testimony. This narrative follows:

NARRATIVE OF ALL TESTIMONY RELATING TO THE ISSUES IN THE CASE AT BAR

I. Uniform Single and Joint-Line Scale Advocated

The carriers advocate a single and joint-line scale of rates for uniform application on fertilizer and fertilizer material throughout southern territory. The territory embraced in the proposed adjustment of the carriers included all points on and east or south of the Mississippi and Ohio Rivers, Virginia cities and points south thereof, subject to a few exceptions (R. 248).

The proposals of the carriers were based on the Royster scale prescribed by the Interstate Commerce Commission in *Royster Guano Company v. Atlantic Coast Line R. R. Co.*, 50 I. C. C. 34. The joint-line scale proposed was generally 34 cents higher than the single-line scale (R. 251-253).

No change in the basis of making less-than-carload rates on fertilizer, i. e., 120 per cent of the carload rates, was proposed by the carriers (R. 254).

II. History of Rates on Fertilizer Between Points in the State of Alabama

The present scale of rates on fertilizer applicable between points in the State of Alabama became effective on July 25, 1924, pursuant to the order of the Alabama Commission. Prior to that time, and extending back for a period of some-

thing like 17 years, the rates on this commodity were made by the use of the mileage scale of rates commonly referred to as the Alabama Statutory Scale. By statute approved November 23, 1907, the Alabama Legislature fixed the same mileage scale of rates on fertilizer carload and less carload between points in that State, as were then in effect between points in the State of Georgia on carload and less carload traffic. This action by the Alabama Legislature was taken without any prior investigation and without any hearing in respect to the reasonableness either of the rates then existing, or of the rates fixed by this statute, and resulted in substantial reductions in the rates previously in effect. These rates remained in force until they were superseded by the order of the Alabama Commission entered on July 25, 1924, except as they were changed by General Order 28, Ex Parte 74, and the general reduction of 1922. During the latter part of 1921 the Alabama Public Service Commission cited the carriers operating in that State to show cause why that commission should not establish a just and reasonable scale of freight rates on all commodities moving between points within the State of Alabama. In response to that citation, the carriers submitted to the Alabama commission a mileage scale for application on fertilizer between points within the State of Alabama, which scale was substantially the scale prescribed by the Interstate Commerce Commission in the Third Royster Scale, 50 I. C. C. 35, advanced under General Order 28 and Ex Parte 74 and modified so as to make the rates end in even figures. The Alabama Public Service Commission prescribed a scale of rates for application over the standard lines which were materially lower than the rates proposed by the carriers and lower than the rates that were prescribed by the Interstate Commerce Commission in the Third Royster Scale case; somewhat higher rates were prescribed over and in connection with the weaker roads (R. 442-451).

The scale of rates prescribed by the Alabama Commission is considerably lower than the scales prescribed by the Interstate Commerce Commission in the *Blackshear Case*, 87 I. C. C. 654, for application from Blackshear, Georgia, to points in Florida. They are also lower than the scale of rates on the same commodities prescribed by the commission in the *Memphis-Southwestern Case*, 77 I. C. C. 473 (R. 445-447).

The scale of rates which the Alabama Commission prescribed and which became effective on July 25, 1924, is not materially higher than the rates that were in force before the carriers received authority in Ex Parte 74 to make a general increase in their freight rate structure; there are a few mileage blocks as to which the present rates are the same as, or less than, the rates in effect prior to this revision (R. 448).

The effect of the new scale of rates prescribed by the Alabama Commission is to deny the carriers the full measure of the general increase granted in 1920 over a scale of rates which the Alabama authorities had prescribed for application within that State. For each and every block of distances the Alabama Commission's scale is less than either the scale prescribed by the Interstate Commerce Commission in *Memphis-Southwestern Case*, 77 I. C. C. 473, or in the *Meridian Rate Case*, I. & S. Docket No. 1372, 66 I. C. C. 179 (R. 448).

Exhibit No. 164 was introduced by the carriers for the purpose of comparing the local scale of rates on fertilizer to various southeastern lines with the single-line scale prescribed by the Alabama Commission, also the Third Royster Scale, and shows that the scale of rates prescribed by the Alabama Commission is considerably below the level of other scales which measure in quite a large degree the rates which those lines apply on fertilizer in the territory in which the scales apply (R. 450).

Exhibit No. 165 contains a comparison of the specifically published interstate rates on fertilizer from manufacturing points in the State of Alabama for single-line application up to 200 miles from the manufacturing point with the rates on the basis of the Alabama Commission's scale and on the basis of the Third Royster Scale. The exhibit shows that the Alabama Commission went very much below the level of the interstate rates in fixing the scale for application within that State (R. 450). An analysis of Exhibit No. 166 shows that out of a total of 2,355 rates, the Alabama scale is less than the interstate rates shown on this exhibit in 2,145 instances, is higher in 182 instances, and is the same in 28 instances; an analysis also shows that the substitution of the Third Royster Scale for the present interstate rates from the manufacturing points to the destinations shown on Exhibit No. 166 will produce 1,114 reductions, 963 advances, and 278 instances in which there will be no changes in the present rate (R. 450, 451).

Witness Sheppard introduced Exhibit No. 135 showing in detail the Mississippi intrastate rates on fertilizer for single-line hauls. These rates for the stronger lines up to 200 miles are as follows:

In Cents Per Ton of 2,000 *Pounds*

Miles	I.C. R.R.	Y. & M.V. Ry.	A. & V. Ry.	N.O. & N.E. R.R.	FRISCO Ry.	M. & O. R. R.
5	90	90	100	100	90	90
10	100	102	100	100	100	100
15	100	102	100	100	100	100
20	100	102	100	100	100	100
25	100	102	120	100	100	100
30	100	102	130	100	100	100
35	100	102	130	100	100	100
40	100	102	140	100	100	100
45	100	102	140	100	100	100
50	100	102	140	100	100	100
55	100	102	140	100	100	100
60	100	102	140	100	100	100
65	100	102	140	100	100	100
70	100	102	140	100	100	100
75	120	113	140	120	120	120
80	120	113	140	120	120	120
85	130	124	140	130	130	130
90	130	124	140	130	130	130
95	140	147	140	140	140	140
100	140	147	140	140	140	140
110	160	158	140	160	160	160
120	170	169	140	170	170	170
130	180	180	140	180	180	180
140	210	203	140	210	....	210
150	210	214	140	220	....	220
160	230	225	....	230	....	230
170	230	237	....	....	....	230
180	260	248	....	....	....	230
190	270	248	....	....	....	230
200	280	259	....	....	....	230

The witness also explained that joint-haul rates in Mississippi were made by combining the local rates and making a deduction therefrom. The rates arrived at in this manner, however, are published as specific rates (R. 372 *seq.*).

III. Evidence As to Discrimination of Alabama Intrastate Rates Against Interstate Rates

The carriers introduced a series of exhibits through witness L. L. Drescher dealing with the question of discrimination of the Alabama state rates against interstate rates, as covered by he allegations in the thirteenth section petition (R. 441 *seq.*).

As the first of this series of exhibits dealing with the question of discrimination of state against interstate traffic, resulting from the application of the recently prescribed scale of rates in Alabama, the witness introduced his Exhibit No. 168, which is a map showing the geographical outlines of the State of Alabama, and also the lines of railroad between certain fertilizer manufacturing points in Alabama and fertilizer manufacturing points in adjacent States. The names of the railroads running between the several manufacturing points are shown on the exhibit. The Southern Railway runs between Decatur, Ala., and Chattanooga, Tenn., also between Decatur, Ala., and Corinth, Miss.; the Louisville & Nashville Railroad Company runs between Decatur, Ala., and Nashville, Tenn.; the St. Louis-San Francisco Railway Company runs between Birmingham, Ala., and Tupelo, Miss.; the Southern Railway Company runs between Birmingham, Ala., and Rome, Ga.; the Alabama Great Southern Railway runs between Birmingham, Ala., and Meridian, Miss.; the Central of Georgia Railway Company runs between Birmingham, Ala., and Columbus, Ga.; the Western Railway of Alabama and the Atlanta & West Point Railroad Company runs between Montgomery, Ala., and Newnan, Ga.; the Seaboard Air Line Railway Company runs between Montgomery, Ala., and Richland, Ga.; the Central of Georgia Railway Company runs between Montgomery, Ala., and Eufaula, Ala.; the Seaboard Air Line Railway Company and Central of Georgia Railway Company form a line between Montgomery, Ala.,

and Columbus, Ga., as do the Western Railway of Alabama and the Central of Georgia Railway Company; the Louisville & Nashville Railroad Company forms a line between Montgomery, Ala., and Mobile, Ala. The above points outside the State of Alabama were chosen because the witness understood that there is a fertilizer movement to each of said points and the territory between these points and the Alabama cities may, in his opinion, be considered as a natural and logical marketing territory for those factories.

Exhibit No. 169 shows the present adjustment of rates from Birmingham to agency stations on the line of the Louisville & Nashville Railroad between Birmingham, Ala., and Nashville, Tenn., in comparison with the rates for equidistant hauls from Nashville in the reverse direction to agency stations intermediate to Birmingham. The rates from Birmingham to stations on this part of the Louisville & Nashville Railroad are very much less than the rates for corresponding distances from Nashville, Tenn. As an illustration: The rate from Birmingham to Athens, Ala., for 98 miles, is $1.95; from Nashville to an equidistant station in Alabama, Elkmont, the rate is $2.59. From Birmingham to Elkmont, 107 miles, the rate is $2.05; from Nashville to Athens, for the same distance, the rate is $2.59. Athens and Elkmont represent about the midway points. The exhibit shows that insofar as the rates are concerned, Nashville is at a considerable disadvantage as compared with Birmingham in making shipments to points in Alabama. However, a comparison between the Alabama intrastate scale and the L. & N. Railroad's interstate scale for longer distances would have shown the opposite result (R. 821). The other illustrations on the exhibit are to the same effect. There have been carload shipments this season from Birmingham to the following stations in Alabama shown on Exhibit No. 169, to-wit: Trafford, Hayden, Blount Springs, Garden City, Hanceville, Cullman, Falkville, Hartselle, Decatur, Athens, and Elkmont. The witness

did not find out whether there were any movements from Nashville, as it appeared to him that there was not much probability of a movement from Nashville to those points in Alabama in view of the difference in the freight rates. Attached as a part of Exhibit No. 169 is a chart showing the relative rate levels as between Birmingham and Nashville to the territory between these two points, the rate level from Birmingham being much lower than the rates for corresponding distances from Nashville, Tenn.

Exhibit No. 170 (469) shows the present rates from Decatur, Ala., versus Chattanooga, Tenn., to agency stations on the Southern Railway in Alabama between those two points. This exhibit shows that Decatur is now able to ship into these Alabama points at rates very much less than from Chattanooga to equidistant points on the same line of railroad. To illustrate: the rate from Decatur to Scottsboro, for 66 miles, is $1.65, as against a rate of $2.10 for the same distance from Chattanooga, Tenn., to Lim Rock, Ala. A chart accompanying this exhibit shows the lower level of rates from Decatur, Ala., all of which are intrastate, as compared with the rates from Chattanooga, Tenn., from which the haul to each of these stations is interstate. The midway point would be one about 41 miles; Gurley, Ala., from Decatur, and Cedar Grove from Chattanooga. The rate from Decatur to Gurley, Ala., is $1.40 and from Chattanooga to Cedar Grove it is $1.80, or a difference of 40 cents a ton in favor of the intrastate shipper.

Exhibit No. 171 deals with the situation from Birmingham, Ala., versus Rome, Ga., to intermediate stations on the Southern Railway. The exhibit shows that the rates from Birmingham to stations in Alabama are somewhat less than the rates for corresponding hauls from Rome, Ga., to stations in Georgia, and when the state line from Georgia into Alabama is crossed the rates from Rome become materially

higher than for an equidistant haul from Birmingham to stations in Alabama. For instance, the rate from Birmingham to Cook Springs, Ala., is $1.25 for 27 miles; while from Rome to Langdon, Ala., 27 miles, the rate is $1.69. From Birmingham to Anniston, the midway point in this stretch of territory, the rate is $1.60 for 63 miles; while from Rome to Anniston, for the same distance, the rate is $2.16, or 56 cents more than from Birmingham. From Birmingham to Piedmont, Ala., the rate is $1.85 for 88 miles; while from Rome to Seddon, Ala., for the same distance, the rate is $2.34. The rates make an abrupt jump at the State lines, both from Birmingham and from Rome. From Birmingham the rate to the last station in Alabama is $2.03; while to the first station over the line, just one mile further, the rate is 47 cents a ton higher. From Rome, Ga., the jump at the state line is 45 cents for a difference in distance of only one mile, the two points being Fearing, Ga., and Tecumseh, Ala. A chart accompanying the exhibit showing graphically that intrastate rates from Birmingham are very much lower than interstate rates from Rome.

The witness stated that while he had not qualified as a transportation man, he was familiar in a general way with the transportation conditions on the line of the Louisville & Nashville Railroad and also upon the various lines covered by his exhibits and that he knew of no transportation condition existing that would warrant this abrupt break in the rates at the State lines; that he would account for such breaks by the actions of the Alabama and the Georgia State Commissions in making lower rates between points within those states.

Exhibit No. 172 shows the rate situation as between Birmingham, Ala., and Columbus, Ga., to agency stations on the Central of Georgia Railway between these two cities. Columbus, Ga., is just over the State line and there are no agency stations in Georgia intermediate to the Georgia-Alabama

State line. All the rates shown on the exhibit from Columbus are interstate rates, whereas the rates from Birmingham are intrastate. The exhibit shows that Birmingham can ship fertilizer at a rate of $1.25 to a point 29 miles away from Birmingham (Sterretts), while the rate from Columbus to Opelika, Ala., also 29 miles distant, is $1.69, or 44 cents higher than the intrastate rate from Birmingham. Putting that another way, the $1.25 rate will carry Birmingham 30 miles out on the Central of Georgia Railway, whereas, the $1.24 rate will carry Columbus shippers but 15 miles. Birmingham can ship to Childersburg, Ala., 43 miles away, at a rate of $1.40, while the rate for that distance from Columbus to Waverly, Ala., is $1.92. Further illustration from the exhibit using a midway point follows: Alexander City, Ala., is 82 miles from Birmingham and the rate is $1.80; the same point is 75 miles from Columbus, Ga., and the rate is $2.37. Here Birmingham has an advantage of $0.57 a ton for a 7-mile additional haul. A chart accompanying the exhibit indicates the relative rate levels from the two points to stations on the Central of Georgia Railway and shows that the Alabama intrastate rates are very much less than the interstate rates from Columbus.

Exhibit No. 173 shows the rate situation from Birmingham, Ala., to Atlanta, Ga., to stations on the Southern Railway between these two fertilizer manufacturing points. The exhibit shows that the Alabama manufacturing point has a decided advantage over the Georgia point in making shipments of fertilizer to points in Alabama. As an illustration: To Edwardsville, a midway point, Birmingham has a rate of $1.85, while to Columbus, Atlanta has a rate of $2.37.

Exhibit No. 174 shows the rate situation from Montgomery, Ala., as compared with Richland, Ga., to stations on the Seaboard Air Line Railway between those two points. The Alabama intrastate scale applies between these two points. The Alabama intrastate scale applies from Montgomery to

stations on the Seaboard Air Line in Alabama and the intrastate rates are very much less than the rates now in effect from Richland, Ga., for equidistant hauls to points in Alabama. The rates make an abrupt jump at the state line similar to the jump described in the rates from Columbus, Ga.

The Central of Georgia Railway has a line running between Montgomery, Ala., and Columbus, Ga., and Exhibit 175 shows the rate adjustment from Montgomery to stations on that line as compared with the rate adjustment from Columbus to equidistant stations in the reverse direction. The exhibit shows that the intrastate rates are very much less than the interstate rates applicable from Columbus. The relative adjustments from the two points are shown by a graphic. As an illustration: The rate from Montgomery to Peachburg is $1.45 for a distance of 47 miles; from Columbus, Ga., to Peachburg, Ala., the rate is $2.14 for 49 miles, a difference in the rate of 69 cents for a difference in distance of two miles.

Exhibit No. 176 deals with the western portion of the State of Alabama and shows the rate adjustment from Decatur, Ala., versus Corinth, Miss., to intermediate agency stations on the Southern Railway Company. This exhibit, like the previous ones, shows that Decatur has materially lower rates to Alabama points than obtain from Corinth, Miss., for like hauls to points in Alabama. As an illustration: From Decatur to Sheffield, Ala., a distance of 45 miles, the rate is $1.40; while from Corinth to Sheffield, 53 miles, the rate is $2.10. The rates take an abrupt jump at the state line which is accounted for by the low rates in Mississippi from Corinth to destinations in Mississippi. There is a jump of 78 cents a ton in the rate for a difference in distance of 3 miles.

Exhibit No. 177 shows that the rates from Birmingham, Ala., to stations on the St. Louis-San Francisco Railway in Alabama are considerably less than the rates which apply for

corresponding distances in the reverse direction, from Tupelo, Miss., to points in Alabama on the same road. As an illustration: The rate to Carbon Hill, Ala., from Birmingham is $1.55 for 60 miles as compared with a rate of $2.10 from Tupelo to Guin, Ala., for the same distance.

Exhibit No. 178 shows the adjustment prevailing from Mobile, Ala., and Pensacola, Fla., to stations on the Louisville & Nashville Railroad as far north as Montgomery. Pensacola is located on the Pensacola Division of the Louisville & Nashville Railroad, which connects with the main line at Flomaton, Ala. It is 16 miles nearer Flomaton and destinations north of Flomaton than is Mobile, but the rates to very many of these stations from Mobile are now lower than from Pensacola. Prior to the effective date of the Alabama Commission's order in the *Fertilizer Case*, July 25, 1924, to part of this line as far north as, but not including, Greenville, Ala., 134 miles from Mobile and 118 miles from Pensacola, the rates from the two points were the same. To stations Greenville and north the rates from Mobile were higher than from Pensacola. The recently prescribed scale of the Alabama Commission has changed this situation and has given to Mobile a decided advantage to a greater portion in this territory, notwithstanding the fact that the distance favors Pensacola.

Exhibit No. 179 shows that the rates from Decatur, Ala., to stations on the main line of the Louisville & Nashville Railroad in Alabama are less than the rates on fertilizer from Decatur to stations on the main line of the Louisville & Nashville Railroad north of Decatur in Tennessee and Kentucky. As an illustration: The rate from Decatur to Cullman, Ala., a point 32 miles south of Decatur, is $1.30; while to Prospect, Tenn., 30 miles north of Decatur, the rate is $1.69. The exhibit shows the advantage in the way of freight rates that parties at these stations in Alabama have over those in Kentucky and Tennessee in purchasing fertilizer from Decatur.

The witness stated he thought that in all probability the parties located on the Louisville & Nashville contiguous to Decatur would be disposed to buy fertilizer at Decatur, particularly if they stood the freight rates.

Exhibit No. 180 deals with the rate adjustment as between Eufaula, Ala., and Columbus, Ga., to stations on the Central of Georgia Railway in Alabama. Eufaula is located on the Alabama side of the Chattahoochee River, while Columbus is on the Georgia side of the same stream. The Central of Georgia Railway has a direct line running from Montgomery to Eufaula. From Columbus it has a line running to Union Springs, Ala., at which point connection is made with the line extending from Montgomery to Eufaula. The exhibit shows the present rates on fertilizer from Alabama points as compared with rates on like traffic from the Georgia points to Montgomery and intermediate agency stations on the Central of Georgia Railway and shows that Eufaula enjoys a very much lower rate than does Columbus. For example: The rate from Eufaula to Cedar Plains, Ala., is $1.30 for 35 miles, while from Columbus, Ga., to Hurtsboro, Ala., for the same distance, the rate is $1.80. This exhibit covers points between Columbus and Montgomery on the one hand and between Montgomery and Eufaula on the other hand, but does not cover points from Columbus to stations on the Central of Georgia Railway west of Union Springs and in the direction of Eufaula.

The witness Drescher testified that the scale of rates prescribed in July, 1924, by the Alabama Commission does not apply from Birmingham to stations on the Alabama Great Southern Railway between Birmingham and Meridian and that the disparities as between state and interstate rates shown in his exhibits do not exist in the rates from Birmingham, Ala., versus Meridian, Miss., to stations on the Alabama Great Southern Railway between these points; that such rates are more nearly in line one with the other due to the order of

the Interstate Commerce Commission in the *Meridian Case;* that if it was not proper to have an intrastate adjustment from Birmingham to these Alabama points materially lower than from Meridian to the same points, there are no conditions that will justify the present disparity in favor of the intrastate rates from Alabama manufacturing points as compared with the interstate rates from points outside of Alabama as represented in his exhibits (R. 462):

Mr. Drescher (R. 475) said:

> "It is a fact that the Alabama scale beyond 220 miles is generally higher than our so-called normal scale. There are instances, of course, in which your scale is less than our local scale. Our normal scale carries carload minimum weight of 15 tons; the Alabama scale carries carload minimum weight of 20 tons, except some few items."

And at R. 476 he said:

> "I would have found some of the Alabama rates to be higher than a good many of the maximum rates, yes."

He also testified on cross-examination that he had overlooked the fact that the Illinois Central Railroad had been accorded the short-line rates which were higher than the interstates rates on that road (R. 477).

Exhibit No. 181 shows the present rates on fertilizer from Birmingham, Ala., and Meridian, Miss., to points on the Alabama Great Southern Railroad between those cities, and the rates for corresponding distances on basis of the Third Royster Scale. The present rates are, on the whole, slightly lower than the rates shown in the Third Royster Scale.

The witness Drescher testified that an inconsistent and anomalous situation existed in the present adjustment of rates on fertilizer in Alabama in connection with the rates from Montgomery to certain stations on the Mobile & Ohio Rail-

road and from Birmingham to stations on the Alabama Great Southern Railroad located in so-called Meridian territory; that the Alabama scale is not applied from Montgomery to stations on the Mobile & Ohio Railroad west of Tuscaloosa, or from Birmingham, Ala., to various stations on the Alabama Great Southern Railroad west of Tuscaloosa because of the order of the Interstate Commerce Commission in the *Meridian Case*; that the Louisville & Nashville Railroad was not a party to the proceeding and since the order issued in connection therewith did not run against that line, there appears to be no prohibition running against the application of the joint-line scale of rates prescribed by the Alabama Commission in making rates on fertilizer from Montgomery or Birmingham to these stations on the Mobile & Ohio and Alabama Great Southern Railroads; that the rates which have direct application from Montgomery over the Mobile & Ohio Railroad and from Birmingham over the Alabama Great Southern Railroad to stations on those lines west of Tuscaloosa are higher than the joint-line scale prescribed by the Alabama Commission applicable over the Louisville & Nashville Railroad in connection with the Mobile & Ohio Railroad or the Alabama Great Southern Railroad via Tuscaloosa.

Witness Drescher admitted on cross-examination that he had not given consideration to rates on cottonseed products (meal and hulls) which are included in the fertilizer list in making his comparisons of Alabama rates with interstate rates.

Exhibits 291 to 303, inclusive, show carload movements of fertilizer from some of the Alabama shipping points and from some of the interstate shipping points to destinations in Alabama covered by Exhibits 169 to 181. The purpose of Exhibits 291 to 303, inclusive, was to show the advantage that the Alabama manufacturing points have under the rate adjustment over the interstate shipping points to destinations in Alabama.

The Alabama, Florida & Gulf is a short line railroad leading from Alabama to Florida. The rate from Dothan, Ala., to the last station on its line in Alabama is $1.71 per ton, while the rate from Dothan to the first station on its line in Florida is $2.37 per ton; the difference in the rate is 66 cents per ton for a difference in distance of 2 miles. The Alabama farmer is paying the same price for fertilizer as is paid by the Florida farmer.

Exhibits 360-384, inclusive (R. 700), show a comparison of the present interstate rates from points in Georgia, South Carolina, North Carolina, Florida, Tennessee, Mississippi, and Alabama to interstate destinations with the intrastate scale prescribed by the State Commissions in adjacent states; the exhibits show that the prevailing level of interstate rates is materially higher than are the intrastate scales.

A. D. Strobhar, president of the Southern Fertilizer and Chemical Company, testified that his company had not suffered in any way from any discrimination on account of the Alabama State rates and that his company does not do business in Alabama (R. 948 *seq.*).

IV. Reasonableness of Rates Prescribed in Third Royster Case

The witness Drescher introduced a number of exhibits for the purpose of proving that the Royster scale prescribed in 50 I. C. C. 34 and brought up to date under the several general increases and the general reduction in 1922 is a fair and reasonable basis for application throughout the South.

V. Rates Over Short Lines in Alabama

Mr. John A. Streyer, traffic manager of the American Short Line Railway Association, introduced a number of exhibits which demonstrate that with one or two exceptions the rates applicable over short lines, both joint and single hauls, are higher than the Third Royster Scale; the exhibits show

the exceedingly low level of the present rates in Alabama and Georgia so far as the rates for single-line hauls are concerned (R. 582).

Witness Streyer further testified that a questionnaire sent to the various short lines in the South developed that between 85 and 95 per cent of the fertilizer traffic was joint traffic, that 20 to 25 per cent of such traffic is interstate and the remainder intrastate (R. 586). He testified that in Alabama fertilizer is one of the leading commodities handled by the short line railroads; that at the present time the rates on fertilizer on interstate joint hauls from and to points on short line railroads are as a rule made upon combination basis; that the intrastate rates are made on combinations less percentages varying in the different states, with the exception of the State of Alabama in which there is a joint-line scale; that generally speaking the single-line rates applicable over the short lines are higher than the Royster Scale, which latter scale is entirely too low for application over the short lines; that Georgia and Alabama are the only two states, generally speaking, in which the single-line scale is less than the Royster Scale (R. 584).

Exhibit 285 shows that for 65 of the important short lines in the South the rate of return was 1.525 per cent standard return on the investment and that the net income of these railroads shows a loss of 2.404 per cent.

Witness Alldredge testified that some of the short lines in Alabama handle comparatively little fertilizer and that the chief problem of such lines is holding their traffic against automobile and truck competition (R. 845).

VI. Certain Interstate Scales of Rates Are Lower Than the Alabama Scale

Mr. J. H. Alldredge, head of the Transportation Department of the Alabama Public Service Commission, introduced an exhibit showing that the standard line scale in Alabama is higher than the interstate scale of the Illinois Central Railroad which runs into Alabama, and stated that the Alabama Commission has for years treated the Illinois Central Railroad as a short line and allowed it to charge even higher rates than the standard lines.

Sheet No. 13 of Exhibit No. 472 compares the present rates on imported fertilizer materials from Gulf and South Atlantic ports to various important southeastern destinations with the rates that would be produced by the rigid application to the Alabama scale. Numerous increases would be made if the Alabama scale were applied rigidly (R. 824). Sheet No. 7 of Exhibit 472 shows that the Alabama scale averaged as high as the standard interstate scales on fertilizer of the Illinois Central, Mobile & Ohio and Louisville & Nashville Railroads (1234).

Exhibit No. 474 shows that the Alabama scale if applied in the Mississippi Valley would increase the level of the existing rates in Mississippi and practically bring the level up to what the carriers originally proposed in I. & S. 1303 as a common level of rates for the Southeast (R. 825).

Sheet No. 18 of Exhibit 472 shows a comparison of certain interstate rates around and across the border of Alabama and back into Alabama with the Alabama scale for the short line distances; the carriers discovered these discrepancies and same have been corrected by increasing the intrestate rates to the Alabama scale. The Alabama scale did not reduce all of the rates (R. 824).

VII. In and Outbound Rates

Exhibits No. 324 and 325 were introduced and shows the existing transportation costs in the assembly of raw materials and in the distribution of the finished product for 100 miles, of the average mixture known as 10-3-3, consisting of the average typical ingredients. The Exhibit shows that on the average, taking a higher and a lower transportation cost at plants, that an average in the neighborhood of $5.00 will represent something like the general average inbound and outbound transportation cost in the South in the making and distribution of a 10-3-3 mixture (R. 660, 661).

The preponderance of the outbound movement from the fertilizer plants in Alabama is for short hauls, while the preponderance of the inbound movement on the materials is for the long hauls (R. 827).

Domestic freight rates on all inbound materials are at issue except upon rock and acid.

The carriers proposed to follow out a port equalization plan in making import rates on fertilizer materials by using the scale from the nearest port, equalizing that rate from competitive ports for longer distances, making a less charge from such further distant ports than the scale itself would provide (R. 283-285).

VIII. Fertilizer Revenue Tonnage, Etc.

Exhibits were introduced to indicate the fertilizer tonnage carried and the percentage of fertilizer revenue of total revenue. The total revenue derived from fertilizer carried by Class I roads in the Southern District is equal to 1.3 per cent of the total revenue derived from all freight carried in this district as compared to .3 per cent for the Eastern District and .1 per cent for the Western District (R. 883).

Exhibits were introduced to show by districts the total fertilizer tonnage originated and carried by Class 1 roads during the years 1920 through 1923. During each of these years the Southern District originated more fertilizer tonnage than either of the other districts and the Southern District carried more fertilizer than either of the other districts, except during 1921 and 1922; for the latter two years the fertilizer carried in the Southern District was practically five times the amount carried by the Western District and was practically equal to that carried by the Eastern District (R. 837).

An exhibit was introduced to show the comparison between the total revenue and revenue per ton on fertilizer, and total revenue and revenue per ton on all commodities. The average revenue per ton on fertilizer, admittedly a low grade commodity, is approximately the same in the Southern District as the average revenue per ton on all commodities, including high-grade commodities, in this district, while in the Eastern and Western Districts the average revenue on fertilizer is much lower than on all commodities. The average revenue per ton on fertilizer in the Southern District is 99.135 per cent of the average revenue per ton on all commodities on comparison with 90.189 per cent in the Eastern District and 74.916 per cent in the Western District (R. 835, 836).

An exhibit showed that the average ton haul of inbound fertilizer in Alabama during 1923 was only 5.8 miles shorter than the average ton haul of all commodities in the entire Southern District, while the average weight per car of fertilizer inbound was heavier in Alabama in 1923 by 7.84 tons than fertilizer originated on Class 1 roads in the entire Southern District; the outbound movement in Alabama during 1923 showed a heavier average weight per car than the average weight per car on fertilizer originating in the entire Southern District by 4.13 tons (R. 835 *seq.*).

An exhibit showed a comparison of the interstate and intrastate movement of fertilizer to and from the plants located in Alabama to the total railroad movement inbound and outbound of strictly fertilizer and fertilizer materials in the Southeast, only 20.78 per cent moves interstate and of the outbound movement only 8.36 per cent moves interstate; of the movement inbound and outbound of all fertilizer and fertilizer ingredients, regardless of tariff classification and point of origin, only 47.95 per cent moves interstate (R. 837).

IX. Average Loading of Fertilizer Per Car

The average loading of fertilizer per car in the Southeast is 23.7 tons; the average loading of fertilizer per car in Alabama is approximately 29.6 tons (R. 822).

X. Fertilizer Companies Not Interested in Rates But in Relationship

The fertilizer industry has no interest in the transportation costs in the aggregate excepting so far as the interests of the consumers are of moment to the industry. Irrespective of the form and terms of sale, the total transportation cost of raw materials and distribution of finished products are expressed in the ultimate consumer prices. So far as concerns the manufacturers of fertilizers, their direct interest in the transportation rates is that there shall be uniformity and that as clearly as possible there shall be an adjustment of inequalities now existing. So far as concerns the total transportation cost, the interest of the industry is the same as that of the consumer, namely: to assist in a just discrimination of such reasonable transportation costs as will assign fertilizer to such rating as recognizes its peculiar position as an agricultural necessity. The primary interest of the fertilizer interests in this proceeding is to get equality (R. 652, 653).

XI. Price of Fertilizer Fixed by Coast Points

The manufacturers of fertilizer located at the ports are in a position to, and in fact do, fix the prices on fertilizer for the neighboring interior areas. The market prices of fertilizer are made based on the coast manufacturing points. When fertilizer is purchased at a coastal producing point, the purchase is made on the basis f. o. b. shipping point, the purchaser paying the transportation rate from such point to destination. Factories located in the interior are compelled to meet the competitive prices fixed by the port communities (R. 652, 653).

At almost any country station in Alabama during this year the price of 10-2-2 fertilizer delivered at the station from any fertilizer company was practically the same (R. 655).

There are fertilizer factories situated along the Gulf Coast and the South Atlantic and North Atlantic Coasts that have a natural advantage in assembling their raw materials from the interior factories. If a scale is graded in such a way that an artificial preference is given to the long-haul shipper located back in the interior, the long-haul shipper can combine that advantage with his natural advantage and play havoc with the interior man. This fact deserves very important consideration in the grading of the scale. The Alabama Commission in prescribing its scale endeavored to avoid such an artificial preference (R. 819).

XII. Competition in Sale of Fertilizers

Fertilizer factories are scattered all over the Southeastern territory and are individually competing in common territory in the sale of fertilizer and if a scale breaks too abruptly the chances are that one or more of the several factories competing in the same territory will obtain the advantage of the breaking scale and use it against its competitors.

The fertilizer factories are scattered around so that in almost every spot in the Southeast there is competition between two or more factories (R. 818). The International Agricultural Corporation maintains plants located throughout the Southeastern States. It operates 24 plants and has a 50 per cent interest in about as many more joint corporations (R. 657). The American Agricultural Chemical Company engages in manufacture and distribution of fertilizer throughout the entire South; it operates about 35 plants, a good many of which are in the South (R. 711). The F. S. Royster Guano Company operates extensively throughout the South; it maintains about 14 plants in the South (R. 726).

XIII. Wagon Deliveries of Fertilizer in Alabama

One witness testified that from the mixing plants, as distinguished from the manufacturing plants, located throughout the States of Georgia and Alabama, probably as much as 50 per cent of their entire product of completed fertilizer moves out by wagon (R. 672, 819, 827).

Witness Alldredge testified that fertilizer moves out to the farmers at a season of the year when they are not busy with their crops and when they can very easily haul the fertilizer for some distance with their wagons at a relatively low cost, and that unless the rates for the short hauls are kept within bounds, the wagon competition becomes quite severe. Investigations made by the Alabama Public Service Commission show that about 15 per cent of the fertilizer distributed to the farmers is now hauled by wagons and that even under the Alabama scale there is considerable wagon and truck competition (R. 819). In an investigation of the truck competition in Alabama under the revised Alabama scales, it was found that one fertilizer factory had employed a truck and contracted with that truck to deliver fertilizer from its factory at a lower charge than the Alabama scale produced for

the short hauls and that quite a volume of its product was distributed by that fertilizer company in that manner (R. 819).

Exhibit 476 compared the percentages of railroad movement interstate and intrastate from certain fertilizer plants located in Alabama to the total railroad movement and to the total distribution of fertilizer by such plants, including their wagon, boat and other deliveries. During 1923 the wagon deliveries amounted to 15.57 per cent of the total distribution, while the boat and other deliveries were 9.56 per cent, leaving only 68.41 per cent for intrastate railroad movement and 6.46 per cent for interstate movement (R. 837).

Witness Cooper, in Exhibit 476, containing 10 sheets, further showed the earnings of carriers by districts in the United States for part of the year 1920 and for the full years of 1921, 1922 and 1923. In summary sheet 10, this exhibit shows the following as the average percentage of return:

	1920 (4 mos.)	1921	1922	1923
Eastern District	0.97 (Dr)	3.80	5.09	6.89
Southern District	0.84	3.28	5.27	5.88
Western District	1.38	3.69	4.16	4.64

(R. 842.)

The examiner, who functions similarly to a master, proposed a report which we contend is irrelevant (R. 1035). If this Court should hold that this proposed report is evidence, it will be found on pages 925 to 1006 of the printed record. The examiner sums up his findings (R. 1005, 1006). This summary, if admissible testimony, in so far as it relates to Alabama's rates is:

Summary of proposed findings:

1. Fertilizer and fertilizer materials found to be entitled to relatively low rates because of their importance to agriculture, and because of the direct and indirect tonnage accruing to the carriers through their use.

2. Reasonable single and joint-line rates on fertilizer and fertilizer materials prescribed for application between all points in the Southeast, as described in Appendix A. Certain groupings authorized from the Ohio River.

3. An arbitrary of 50 cents a ton prescribed when the transportation is in connection with so-called short and weak lines, such arbitrary to accrue to these carriers. Rates in connection with the Norfolk Southern made 10 per cent higher than the distance scale, but in no case to exceed 50 cents a ton, this excess to accrue to the Norfolk Southern.

* * * * * * * * * *

5. The intrastate rates in Alabama found to unjustly discriminate against interstate commerce, and to unduly prejudice interstate shippers and localities.

Exceptions were filed to this report by the Alabama Public Service Commission and these exceptions, over Appellants' objection, were made part of this record (R. 1023-1028, for objection R. 1035).

These, omitting argument (R. 1023), are:

EXCEPTIONS.

I.

Exception is taken to the measure of the proposed scale insofar as it exceeds the scale proposed by the representatives of the public.

II.

Exception is taken to the graduation of the proposed scale between 500 and 600 miles, inclusive.

III.

Exception is taken to the basis of rates proposed in the report for short lines.

IV.

Exception is taken to the proposed minimum carload weight on cottonseed hulls.

V.

Exception is taken to the proposed finding with respect to intrastate rates in the State of Alabama.

FINDING AND CONCLUSION OF INTERSTATE COMMERCE COMMISSION.

On July 19, 1926, the Interstate Commerce Commission announced its conclusions in an extensive report. This report is in the record, pages 33 to 123, and is reported in Vol. 113 of the Commission's reports, beginning at page 389. Only a small part of this report has any relation to the issues here. The parts that are relevant are:

The order of investigation is quoted (R. 36, 37).

Discussing the industry generally and its relative importance to the carriers, (R. 38, 39) the Commission said:

> "Fertilizer tonnage is also of relatively greater importance to the southern carriers than to the lines in other sections. In 1923 such tonnage of the southern roads represented 1.46 per cent of their total freight tonnage, as compared with 0.35 per cent in the eastern district and 0.18 per cent in the western district. The Atlantic Coast Line leads the southern carriers in the total of fertilizer handled, with the Southern second and the Seaboard Air Line third. In the ratio of fertilizer to total freight, the Central of Georgia ranks first, its fertilizer tonnage being 6.61 per cent of the total, with the Atlantic Coast Line second and the Norfolk Southern third. These ton-

nage figures do not include such materials as potash, acid phosphate, and nitrate of soda, which, for purposes of our statistical returns, are included in commodity Group 66, chemicals and explosives. If these were included, the fertilizer tonnage figures would be appreciably increased. The total revenue of Class 1 roads in the southern district for 1923 from such tonnage was $10,307,000, or 1.3 per cent of the total revenue from all freight handled. In the eastern district the revenue from fertilizer tonnage was but 0.3 per cent of the total. The revenue of the Atlantic Coast Line from this source was 4.7 per cent of its total freight revenue in 1924, and that of the Southern for the first seven months of 1924 was 3.63 per cent of its total for the same period.

"It is beyond debate that agriculture in the South can not be conducted successfully without the use of fertilizer, and agriculture has been and probably still is the basic industry of that section."

Traffic intrastate is (R. 43, 44):

"About 70 per cent of the tonnage of fertilizer and fertilizer materials moving in southern territory, and the intrastate rates in the several states are shown of record."

Density of this particular traffic and average hauls discussed (R. 71) by the Commission (R. 69, 70):

"It is shown that of the total tonnage of fertilizer and materials, amounting to 3,189,819 tons, 70 per cent moved for distances of 150 miles and less. Of the single-line traffic, one-half moved for distances of 85 miles and less, and one-half of the joint-line traffic moved less than 140 miles. These figures bear out testimony of record. Thus it was testified that the average haul of fertilizers from the important manufacturing points in southern territory ranged from 40 miles from Hartsville, S. C., to 181 miles from Charleston, S. C. It is agreed that the average haul of materials substantially exceeds that of fertilizer. For example, it was shown that from 13 plants located at 10 points in Alabama the average outbound haul was 51 miles, while materials moved inbound

to the same plants an average distance of 355 miles. The inbound hauls, of course, vary considerably, depending on the location of the plant with respect to the principal source of its raw materials.

"The test showed that 2,154,422 tons, or 67 per cent of the total, moved single line, and 2,189,254 tons, or about 69 per cent, moved intrastate. Of the total revenue of $7,947,908, almost 60 per cent, or $4,753,932, accrued on intrastate traffic.

"The foregoing data do not take into consideration Florida traffic, either intrastate or interstate."

Extent of increase or decrease that would result from proposals of shippers:

"The carriers estimate roughly that the shippers' scale would result in a reduction in their revenues of not less than $636,146, or $1,272,000 on an annual basis. On brief, counsel for Alabama, although admitting that some revenue reduction would be likely to occur under the shippers' scale, question the carriers' estimate. They point to the fact that the estimate includes $147,000 yearly loss to the Norfolk Southern. This carrier, it will be recalled, is asking for special treatment. It appears that 61 per cent of the total tonnage delivered by the Norfolk Southern during the test period consisted of North Carolina intrastate shipments, on which rates somewhat higher than the Royster scale now obtain. The Alabama Commission does not oppose special treatment for this carrier, and on the assumption that it will be accorded concludes that the estimated reduction in revenue would not take place, or at least would be nominal, thus substantially diminishing the gross estimated reduction under the shippers' scale."

The carload minimum to be prescribed is discussed (R. 75, 79):

"The shippers lay stress upon the increase in carload minimum which they proposed from 15 tons to 20 tons. They note the incongruity that such an increase

should be favored, in general, by the shippers and opposed by the carriers. In Alabama, where the higher minimum has been put to the test, the record indicates that it has substantially increased average car loadings, to the carriers' advantage in economy and efficiency of operation. This has also been the effect of similar increases in the past."

The Commission found (R. 78):

"It may be that such a change in the level of fertilizer rates, up or down, as could reasonably be considered would in itself have comparatively *slight effect upon the financial status of the southern* farmer. But that does not alter the fact that upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. The need for continued progress in the use of fertilizer is so great and the degree of its use, as this record clearly shows, is so dependent upon financial considerations that all burdens associated with its use should be made as light as possible."

Findings as to general parity of rates and as to joint and single line hauls stated (R. 79, 80):

"Carriers and shippers agree, with a single exception, that a uniform level of fertilizer rates is desirable throughout all of southern territory. The single exception is the Florida East Coast, which desires a somewhat higher level to and from points in the Florida peninsula. Considering all the circumstances surrounding this particular form of traffic and the general agreement upon this point, resulting in a paucity of evidence to the contrary, we think that the record supports one uniform level.

"Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint-line than for single-line hauls. The carriers would maintain such a difference for all hauls, while the shippers would have it disappear at 500 miles."

How conclusions were reached and what rates were prescribed stated by the Commission (R. 81, 82, 84):

"Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, and having in mind the principles which we believe should be applied in distributing the burden of rail transportation and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted.

"We therefore find that the rates applicable to the interstate transportation in carloads of mixed fertilizers and of the fertilizer materials listed in Appendix B hereto over standard lines throughout the territory described in Appendix A hereto are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table below, subject to the minimum carload weights found reasonable below; provided, however, that in applying such rates to the longer hauls the respondent carriers may, for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups."

Here follows a table of rates, and the Commission says:

"We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of any of the short or weak lines described below are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above plus an arbitrary of not to exceed 5 cents per net ton, subject to the minimum carload weights found reasonable below, such arbitrary to accrue solely to the participating short or weak line or lines."

Exception to general adjustment is provided for and import rates are discussed (R. 86-88).

Intrastate rates are discussed (R. 91 *seq.*):

"*The Intrastate Cases*

"We come now to a consideration of the petitions of the carriers alleging undue prejudice against interstate shippers and localities and unjust discrimination against interstate traffic, in violation of *Sections 3 and 13* of the interstate commerce act, by reason of the intrastate rates maintained in Alabama, Georgia, and South Carolina. The carriers' evidence was directed almost entirely to a comparison of the interstate rates from manufacturing points outside the respective States with the intrastate rates from plants within those States, the destinations selected being generally located on lines operating between such manufacturing points.

"Taking up, first, the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment. In conjunction with the present rates are shown also the rates under the single-line Royster scale and under the scale herein found reasonable, for the distances shown:

FROM	TO	Distance	Present Rates	Royster Scale	Scale Herein Prescribed
		Miles	Cents	Cents	Cents
Tupelo, Miss.	Glen Allen, Ala.	72	230	214	200
Birmingham, Ala.	do	75	170	214	200
Chattanooga, Tenn.	Larkinsville, Ala.	62	210	203	185
Decatur, Ala.	do	60	155	203	180
Nashville, Tenn.	Elkmont, Ala.	98	259	259	225
Birmingham, Ala.	do	107	205	259	235
Columbus, Ga.	Superior, Ala.	46	203	180	165
Montgomery, Ala.	do	49	145	180	165
Columbus, Ga.	Alexander City, Ala.	75	237	214	200
Birmingham, Ala.	do	82	180	237	210
Rome, Ga.	Anniston, Ala.	63	216	203	185
Birmingham, Ala.	do	63	160	203	185
Atlanta, Ga.	Heflin, Ala.	85	259	237	210
Birmingham, Ala.	do	82	180	237	210

"In the foregoing table, destinations have been selected approximately equidistant from the respective origins, but for other distances the intrastate and interstate rates bear a similar relation. Manufacturing plants are located at all the originating points shown, and the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls.

"The Alabama Commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks, 85 I. C. C. 66, and that before an intrastate rate may be condemned it must be found to work undue prejudice against persons or localities in interstate or foreign commerce or unjust discrimination against interstate or foreign commerce as a whole, citing *Wisconsin R. R. Commission v. C., B. & Q. R. R. Co.*, 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the Alabama rates is 5 tons higher than under the interstate

rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but specific consideration of the present interstate rates is unnecessary, for they will be changed under our findings herein. As shown by the above table, the new rates will be substantially higher for equal distances than the Alabama intrastate rates, and they will be subject to the same carload minimum.

"While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful."

Then follows (R. 84-101) a discussion of the rates in Georgia and South Carolina. Concluding the discussion, the Commission (R. 101, 102) makes these findings:

"That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce.

* * * * * * * * *

"No orders will be entered in these State cases, Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment."

The order following this report of July 19, 1926, was limited to interstate rates and it is not necessary to copy it here.

On October 3, 1927 (R. 24, 25) the first order here claimed to be unauthorized was entered.

After reciting the order of July 19, 1926, stating that the rates hereunder had been made effective although the carriers

> ". . . continue to publish for application to similar traffic within the State of Alabama rates which are upon a substantially lower basis."

All weak line carriers, but none of the short lines, are there named as being subject to the orders of the Commission and as to such carriers the order says:

> "It is ordered, That the common carriers by steam railroad, parties to this proceeding . . . according as they respectively participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before January 3, 1928, from practicing the undue prejudice, undue preference and advantages and unjust discrimination found in said report to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State of Alabama.
>
> "It is further ordered, That the said carriers, according as they respectively participate in the transportion, be, and they are hereby, notified and required to establish, on or before January 3, 1928, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the interstate commerce act, and thereafter to maintain rates and charges for the transportation of fertilizers and fertilizer materials in intrastate commerce within the State of Alabama which shall be not less, for corresponding distances, than the rates contemporaneously applied by said carriers, in accordance with our order of July 19, 1926, and as subsequently

amended, to the transportation by said carriers of fertilizers and fertilizer materials between points in the State of Alabama and points in other states of the United States."

The original bill of complaint in this case was filed December 21, 1927 (R. 17). This bill is shown in the record, pages 1 to 17.

On December 22, 1927 (R. 224-225) a supplemental order was entered by the Commission, the material part of which is,

> "It is ordered, That the order entered herein on October 3, 1927, be, and the same is hereby amended by adding to the carriers named in the third paragraph of said order the following named carriers."

Following this quotation are given the names of nineteen railroads called short or weak lines. None of these were named in the order of October 3, 1927.

Thereafter, and on January 26, 1928, an amended bill of complaint was filed (R. 219-224).

All defendants were served but some of the short lines did not answer; all, however, appeared in the hearings, stipulations, and orders relating to the appeal (R. 1029, 1033, 1035, 1037, 1045).

The order denying the application for interlocutory injunction dated February 14, 1928 (R. 236), recites the fact of a hearing, states briefly the issues, said (R. 237, 238):

> ". . . . the Court having fully considered the application and being of the opinion that the plantiffs were accorded a full and fair hearing before the Interstate Commerce Commission upon all the issues determined by the Interstate Commerce Commission in its reports and in the orders complained of herein; and the Court being of the opinion that all the findings of the Interstate Commerce Commission, contained in its said reports and

orders, were within the issues presented by the pleadings, including the finding that the rates on fertilizers and fertilizer materials, fixed by the plaintiff, the Alabama Public Service Commission, by its order of May 26th, 1924, effective July 25th, 1924, between points in the State of Alabama, unjustly discriminated against interstate commerce in said traffic between points in southern territory under the interstate rates fixed by the Interstate Commerce Commission said proceedings before it as reasonable and made effective by the orders herein complained of; and the Court being of the opinion that the record of the proceedings before the Interstate Commerce Commission shows that the finding of the Interstate Commerce Commission that the said rates between points in the State of Alabama fixed by the plaintiff, the Alabama Public Service Commission, as above stated, unduly and unreasonably discriminate against interstate commerce in its entirety, under the interstate rates fixed by the Interstate Commerce Commission, as aforesaid, for fertilizers and fertilizer materials between points in southern territory and operate as an undue and unreasonable preference in favor of such intrastate commerce between points within the State of Alabama as against such traffic in interstate commerce between points in southern territory under the rates as fixed by the Interstate Commerce Commission for such traffic in said proceedings before it, and constitute an unreasonable discrimination against interstate commerce, as a whole, was supported by substantial evidence; and that the finding of the Interstate Commerce Commission that one schedule of rates for such traffic, whether moving over a single line of railroad, or a number of lines jointly, was advisable, was, as shown by the record of said proceedings before the Interstate Commerce Commission, supported by substantial evidence and so was within the competency and discretion of the Interstate Commerce Commission to adopt.

"It is ordered, adjudged and decreed that the application of the plaintiffs for the issuance of an interlocutory injunction, as prayed for in their Bill of Complain, as amended, be, and it is hereby denied.

"Given this 13th day of February, 1928.

"R. W. Walker, Circuit Judge. Rufus E. Foster, Circuit Judge. W. I. Grubb, District, Judge."

The petition for appeal was filed and granted March 8, 1928 (R. 228, 229). The assignment of errors filed with the petition for appeal is set out in the record, pages 241 to 244.

Appellants (R. 1031) having seasonably filed and served with their notice of appeal a condensed narrative of such portions of the transcript of the evidence and proceedings as the plaintiffs deem material and necessary for the determination of the appeal; and the defendants and intervenor denying that such condensed narrative contains all of the testimony and evidence that is or may be necessary or material for the determination of the appeal and having in writing seasonably filed objections thereto; and the defendants and intervenor having prepared and seasonably presented and served a statement or narrative (in three sections) of all of the oral testimony of the witnesses; and now for the purpose of reducing and settling the record of appeal pursuant to Equity Rule No. 75, the parties by their respective counsel (and with the approval of the Court) stipulate.

After the record came to this Court Appellants made a further effort to shorten the record, filing on May 31, 1928, a Designation of Parts of Record To Be Printed (R. 1038). In this designation (R. 1040) Appellants state:

> "No issue is made in this case with reference to the validity of the order in so far as it prescribes rates applicable to interstate transportation nor in so far as it prescribes rates intrastate in states other than Alabama, the sole issue relating to the order in so far only as it affects transportation within the State of Alabama. Therefore, that part of the narrative of the testimony which relates to interstate rates and to intrastate rates in states other than Alabama is not material and need not

be printed. Counsel for the appellees, with the approval of the court, required the inclusion in the transcript of all testimony before the Interstate Commerce Commission and as to much of which appellants do not deem that it is necessary to be printed."

Appellees not agreeing that the record specified by Appellants was sufficient, designated for printing all the record other than certain exhibits.

Applicable Alabama Statutes Taken From the Code of Alabama of 1923.

Section 9622, the last sentence reads:

"It shall be the duty of the commission to institute or direct the institution of any and all proceedings or suits necessary for the correction and punishment of all violations of the law, or any of the rules or regulations of the commission which shall come to their knowledge without waiting for complaint thereof by a citizen."

Section 9629, the last sentence reads:

"And the commission shall enforce and require compliance with all the provisions of all laws now in force or hereafter enacted regulating railroads and other transportation companies or prescribing the duties thereof."

All actions and proceedings shall be prosecuted by and in the name of Alabama Public Service Commission. Section 9630.

Section 9632 reads as follows:

"9632. *Duties of Commission.*—The Alabama Public Service Commission is charged with the duty of supervising, regulating, and controlling such persons, firms and corporations doing business as aforesaid in this state in all matters relating to their rates and charges and of correcting abuses therein by such persons, firms or corporations. And the Commission shall, from time to time, prescribe and enforce against such persons, firms or cor-

porations such rates and charges as may be reasonable and just, and shall require such persons, firms, or corporations to establish and maintain such rates and charges as may be reasonable and just, which said rates and charges the commission may, from time to time, alter or amend; but where the rates or charges have been fixed or prescribed by statute, the commission shall not have the power to increase such rates or charges."

The Commission is given power by Section 9634 to regulate railroad freight and passenger rates.

The Attorney General represents the Commisison and may employ special counsel. Section 9672.

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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 166

STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION, appellants

v.

UNITED STATES, INTERSTATE COMMERCE COMMISSION, et al., appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

BRIEF FOR THE UNITED STATES AND FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS

The specially constituted District Court (Circuit Judges Walker and Foster and District Judge Grubb) filed no written opinion, but on February 14, 1928, filed an "order denying application for interlocutory injunction." (R. 236.)

The reports of the Commission appear as Docket No. 16295, *Fertilizers and Fertilizer Materials between Southern Points*, 113 I. C. C. 389 (R. 36–105); 123 I. C. C. 193 (R. 131–134); 129 I. C. C. 215 (R. 18–22).

JURISDICTION

The direct appeal to this court from the order entered February 14, 1928, denying the interlocutory injunction, was allowed March 8, 1928. (R. 239.) The suit was brought to set aside certain orders of the Interstate Commerce Commission dated October 3, 1927, and December 22, 1927 (R. 3; 224), and the jurisdiction of this Court on direct appeal rests on the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219, 220), and Section 238 of the Judicial Code as amended by the Act of February 13, 1925. (U. S. C. title 28, Sec. 47.)

QUESTION

In a proceeding instituted upon its own motion, and consolidated and heard with other proceedings begun by complaint of private parties, the Interstate Commerce Commission issued orders requiring, principally, (1) that certain common carriers, subject to its jurisdiction, operating in Alabama and other southeastern states, cease publishing their existing interstate carload rates for transportation of fertilizer and fertilizer materials between all points in specified territory and to publish and charge rates not in excess of those prescribed therein by the Commission as reasonable; (2) that such carriers operating into and through Alabama cease practicing undue discrimination against interstate commerce found by the Commission to

exist because of the relation of interstate and intrastate rates for the transportation of fertilizers and fertilizer materials, in carloads within the State of Alabama; (3) that the discrimination be removed by publishing on those commodities moving within that State intrastate rates which should be not less, for corresponding distances, than the interstate rates therein prescribed. By supplemental order, upon the same record, the Commission authorized certain so-called "weak" or short-line carriers, in addition to those "weak" or short-line carriers dealt with by its original order, to publish intrastate rates on the same commodities, in carloads, to exceed by not more than 50 cents per ton the interstate rates already prescribed.

The question is whether the orders are invalid (1) for lack of authority in the Commission to increase all the intrastate rates to remove the unjust discrimination against interstate commerce found by it to exist, (2) for lack of substantial support in the evidence, and (3) for indefiniteness and generality.

THE STATUTE

Pertinent provisions of the Interstate Commerce Act (24 Stat. 379) as amended by the Transportation Act of 1920 (41 Stat. 456), are:

> SEC. 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any

particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (24 Stat. 379, 380.)

SEC. 13. (3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, * * * there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State. * * * the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, * * * to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State

authorities in the enforcement of any provision of this Act. (41 Stat. 456, 484.)

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceedings affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. (41 Stat. 456, 484.)

SEC. 15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under

honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: * * *. (41 Stat. 456, 488.)

STATEMENT

Facts leading up to the issuance by the Interstate Commerce Commission of its orders of October 3 and December 22 may be stated as follows:

In 1921, the Alabama Public Service Commission instituted an investigation into the reasonableness of freight rates on all commodities moving intrastate in that State, to which investigation all the steam railroads operating in Alabama were made parties, and as a result of the investigation mentioned, on May 26, 1924, the Alabama Commission prescribed two scales of mileage rates applicable on carload movement of fertilizers and fertilizer materials moving intrastate over railroad lines within the State, one scale being for single-line and the other for joint-line, application, and also prescribing rates on fertilizer and fertilizer materials moving in less than carload quantities. (R. 3–4.) Reasons prompting the Alabama Commission to promulgate the scales mentioned were stated by their witness Alldredge in his testimony before the Interstate Commerce Commission in the instant proceeding as follows:

> Agriculture has been in the past and still is the basic industry of the South, and fertilizer is an indispensable asset of the agricultural industry. It is a vital factor in agricultural production. After considering these important facts and all other pertinent facts, both commercial and transportation

surrounding the movement of fertilizer in this section, the Alabama Commission reached the conclusion in the case before it that it would be economically sound, in the general reorganization of our rate structure, of which the revision of fertilizer rates was a part, to assign to fertilizer, a relatively low basis of rates in order that it might move freely and thus contribute something to the welfare of the whole public, including the carriers.

(R. 813.)

A. Proceedings before the Commission

In a petition filed July 30, 1924, with the Interstate Commerce Commission on behalf of all the steam railroads operating in the State of Alabama, and referred to as Docket No. 16336, it was alleged that the Alabama Public Service Commission by its order of May 26, 1924, required said railroads to establish rates on fertilizers and fertilizer materials within said state which are less than those permitted or required by the Interstate Commerce Commission to be established for interstate traffic and that the observance by the railroads of said order of the Alabama Commission will cause and result in undue and unreasonable preference and advantage to intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce and will result in unjust and unreasonable discrimination against interstate commerce, in violation of Sections 3 and subdivisions 3 and 4 of Section 13 of the Interstate Com-

merce Act. (R. 188–201; 196.) Like complaints were filed with the Interstate Commerce Commission on behalf of the steam railroads operating in the states of South Carolina and Georgia, and these complaints were filed as Dockets Nos. 16335 and 16484, respectively. (R. 33, footnote 1.)

Considering these facts and others that had been brought to its attention, the Interstate Commerce Commission upon its own motion, by order dated October 7, 1924 (R. 105–106), instituted a comprehensive investigation into rates on fertilizers and fertilizer materials between Southern points, which proceeding it designated as Docket No. 16295.

The order recites that interstate rates on fertilizers and fertilizer materials between points in southern classification territory differ materially for substantially similar hauls and, in many instances, are higher for shorter than for longer hauls; that from numerous complaints filed with the Commission it appeared that those rates were unsatisfactory both to shippers and carriers, and that carriers had filed petitions alleging that intrastate rates on those commodities in South Carolina and Alabama cause undue advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other. The order specifies with particularity the rates to be considered and institutes an investigation:

> * * * with a view to determine whether said rates and charges are unreasonable or

> are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

On October 14, 1924, the Commission issued an order (R. 207–208) instituting an investigation with respect to the complaint of the steam railroads operating in Alabama, Docket 16336, to determine whether the rates prescribed by the Alabama Commission:

> * * * cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist; * * *.

The various State cases heretofore mentioned, Dockets Nos. 16335, 16336 and 16484, involving rates in South Carolina, Alabama, and Georgia, respectively, were consolidated with the Commission's general investigation and heard upon the same record. (R. 37.)

Pursuant to this investigation, extensive hearings were had at Atlanta, Ga., Montgomery, Ala.,

and Washington, D. C., and the record before the Commission contained over 1,400 pages of testimony and 500 exhibits. The state commissions of Alabama, Georgia, Florida, Mississippi, Kentucky and North Carolina, were represented at the hearings and took an active and helpful part in developing the record. (R. 37.) Following the extensive hearings mentioned, briefs were filed, and a report proposed by the examiner was served upon the parties and to that report exceptions were filed by the carriers as well as by other interests (R. 37), including authorities of the state of Alabama. (R. 1022.) Oral argument was had before the Commission and, under date of July 19, 1926, the Interstate Commerce Commission issued its report herein entitled *"Fertilizers and Fertilizer Materials between Southern Points,"* 113 I. C. C. 389, in which it found, at page 424, (R. 82), with respect to the interstate rates involved in its general investigation:

> We therefore find that the rates applicable to the interstate transportation in carloads of mixed fertilizers and of the fertilizer materials listed in Appendix B hereto over standard lines throughout the territory described in Appendix A hereto are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table below,[1] subject to the minimum carload weights found reasonable below; provided,

[1] See R. 83–84 for table.

> however, that in applying such rates to the longer hauls the respondent carriers may for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups.

Concerning the intrastate rates in Alabama the Commission found, page 435 (R. 101–102):

> That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce.
>
> • • • • •
>
> No orders will be entered in these State cases, Nos. 16335,[1] 16336, and 16484, at this

[1] Since the Commission's decision in the *Fertilizer Investigation*, 113 I. C. C. 389, it has stated in Docket 16335, *Fertilizer Rates in South Carolina*, 147 I. C. C. 178, decided October 2, 1928, that (p. 179) on November 9, 1927, the South Carolina Commission authorized the carriers to establish, intrastate, the scale of rates the Federal Commission had prescribed in the *Fertilizer Investigation*, *supra*, with the exception that the rates were made subject to a carload minimum of 30,000, instead of 40,000, pounds. In the report, 147 I. C. C. 183, 184, the Interstate Commerce Commission found that a carload minimum of 30,000 pounds applicable intrastate in South Carolina would result in unjust discrimination against interstate commerce, and required the 40,000 pounds minimum to be established.

time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment.

With respect to the short or weak lines the Commission found, at pages 425–426 of its report (R. 85):

> We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of any of the short or weak lines described below are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above plus an arbitrary of not to exceed 50 cents per ton, subject to the minimum carload weights found reasonable below, such arbitrary to accrue solely to the participating short or weak line or lines. The short and weak lines covered by this finding are the carriers listed in Appendix D hereto, other than those that are under common control or management with some standard carrier, and also include the Columbus & Greenville; the Kinston Carolina; the Carolina Railroad; the Gulf, Mobile & Northern; the Birmingham & Northwestern; and the Atlanta, Birmingham & Atlantic, so long as they remain independent of standard-line control.
>
> * * * * *

> * * * With respect to the so-called short or weak lines it may be said, as was stated in *Southern Class Rate Investigation*, 100 I. C. C. 513, 653–654, that most of these roads are situated wholly within the limits of a single State and the State commissions are in a much better position than we are to investigate and determine their needs. It is our hope that the State commissions will, either before or after the rates herein prescribed become effective, bring to our attention any instances where the special treatment accorded these short or weak lines is, in their opinion, more or less liberal than their just needs require.

Although, as stated by the Commission in its report of July 19, 1926, no orders were entered by it in the State cases at that time, it did, on said July 19, issue an order (R. 118–122) in connection with **the results of its general investigation into rates upon fertilizers and fertilizer materials between southern points, Docket 16295. By that order the** Commission directed the carriers to cease publishing their existing interstate rates, found in its report to be unreasonable, on fertilizers and fertilizer materials between all points located in southern territory as therein described, and to publish within a specified time and thereafter to charge interstate rates based upon a distance scale, not in excess of those therein prescribed.

On April 4, 1927, the Commission issued a supplemental report and order (R. 131–137) which, in

substance, added certain so-called weak or short lines to those named in the order of July 19, which prescribed for such lines an arbitrary of not more than 50 cents per ton in excess of the scale of rates set forth in the latter order. Another supplemental report and order (R. 18–23) was issued on July 5, 1927, dealing with the measure of relief to be accorded various other weak or short lines, and with petitions for relief from the long-and-short-haul provisions of Section 4.

After the issuance of the Commission's report on July 19, 1926 (R. 36–105), the Alabama Public Service Commission, by petition filed November 11, 1926, requested a rehearing before the Interstate Commerce Commission (R. 921.[1]) In passing, it may be noted that the Alabama Public Service Commission, in its petition for rehearing, stated that the mileage scales of fertilizer rates prescribed by it on May 26, 1924, for general application throughout the State of Alabama on intrastate traffic, if applied generally throughout southern territory, would have reduced the revenues of the carriers, based upon the traffic test made in the proceedings before the Interstate Commerce Commission, approximately $1,250,000 per annum. (R. 1034–1035.) This petition for rehearing was denied on February 7, 1927.

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[1] The petition for rehearing mentioned was, by stipulation of the parties, omitted in printing, but it was agreed that, subject to exceptions, a statement contained in paragraph (c) of the petition for rehearing should stand in lieu of the petition itself. (R. 1034–1035.)

Thereafter all the railroads doing business in the State of Alabama filed petitions with the Alabama Public Service Commission requesting that commission to authorize for intrastate application in Alabama the system of rates on fertilizers and fertilizer materials, and articles taking the same rates, prescribed for interstate traffic by the Interstate Commerce Commission in *Fertilizers and Fertilizer Materials between Southern Points, supra.* (R. 10.)

Argument on these petitions was had before the Alabama Public Service Commission at Montgomery on June 7, 1927, and on July 18, 1927, that commission entered its report and order denying the relief sought. (R. 10.)

By petition filed with the Interstate Commerce Commission on September 3, 1927, all the common carrier railroads doing business in the State of Alabama prayed that the Interstate Commerce Commission enter an order denying the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates found reasonable for the interstate transportation of said fertilizers and fertilizer materials, and articles taking the same rates, in order to finally complete the investigation and make effective the findings in *Fertilizers and Fertilizer Materials between Southern Points, supra.* (R. 11.)

Acting affirmatively upon this petition of the carriers, and in accordance with its finding of July 19, 1926 (R. 101–102), that the maintenance of

intrastate rates in Alabama on a lower basis than the interstate rates prescribed by its order of July 19, 1926, would, in the future, result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce, the Commission issued its order dated October 3, 1927 (R. 24), which is the first of the two orders assailed in this suit (R. 3). That order recites the Commission's finding of unjust discrimination just mentioned and requires that the carriers therein named:

> • • • be, and they are hereby, notified and required to cease and desist, on or before January 3, 1928, from practicing the undue prejudice, undue preference and advantages, and unjust discrimination found in said report to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State of Alabama. (R. 25.)

The order further requires the carriers to establish not later than a date named—

> • • • and thereafter to maintain rates and charges for the transportation of fertilizers and fertilizer materials in intrastate commerce within the State of Alabama which shall be not less for corresponding distances than the rates contemporaneously applied by said carriers, in accordance with our order of July 19, 1926, and as subsequently amended, to the transportation by

said carriers of fertilizers and fertilizer materials between points in the State of Alabama and points in other states of the United States. (R. 25.)

Upon petitions of various short-line or weak carriers operating in Alabama, and upon further consideration of evidence of record in the consolidated proceeding with respect to those carriers, the Commission entered its first supplemental order, dated December 22, 1927 (R. 225), in this proceeding (Docket No. 16336), which is the second of the two orders assailed in this suit. (Amended bill of complaint, R. 219.) Said order of December 22 amended the order of October 3, 1927, by including certain short or weak lines in addition to those named in the third paragraph of the order issued October 3, and by postponing the effective date of the last-mentioned order from January 3 to February 3, 1928. (R. 225.) On December 30, 1927, the effective date of that order was further extended to March 1, 1928.

B. Proceedings in the District Court

This suit to enjoin and annul the two orders last described was begun by petition filed December 21, 1927 (R. 1–17) and amended January 26, 1928 (R. 219–224), by the State of Alabama and the Alabama Public Service Commission naming as defendants the United States and the several carriers respondents to the order of October 3, 1927. The Commission intervened and filed an answer in

which it denied, generally speaking, all the material allegations of the petition (R. 147), as did the answers of the United States (R. 27) and the several carriers. The relief sought is stated in the petition (R. 16–17) as follows:

> (1) That on the filing of this petition, and after a hearing had on three days' notice to defendants, this court, under its order, temporarily stay or suspend the enforcement, operation and execution of the order and orders entered by the Interstate Commerce Commission under the proceeding known as "Fertilizers and Fertilizer Materials between Southern Points" in so far as such orders affect intrastate rates within the State of Alabama.
>
> (2) That an interlocutory injunction suspending and restraining the enforcement, operation, and execution of said orders of the Interstate Commerce Commission in so far as such orders affect rates for transportation wholly within the State of Alabama.
>
> (3) Enjoining defendant carriers until final hearing, from collecting the rates prescribed in the tariffs affecting rates on transportation wholly within said State claimed to be filed in conformity with the order of the Interstate Commerce Commission of October 3, 1927, and from collecting other or different rates than those prescribed for intrastate application by the Alabama Public Service Commission in the State of Alabama.

(4) That after further hearing in accordance with law, said court suspend, set aside, and annul the order of October 3, 1927, the findings of July 19, 1926, and any and all other orders or findings, authorizing, permitting or requiring interference with the intrastate rates of Alabama on the commodities of fertilizers and fertilizer materials.

(5) That a permanent injunction be granted against the carrier defendants, enjoining them as prayed in paragraph (3) of this prayer.

(6) That should the Interstate Commerce Commission permit, on the petition of November 29, 1927, hereinbefore referred to, the carriers therein named to file tariffs in accordance with the order of October 3, 1927, petitioners be permitted to amend and make such carriers parties defendant, and that all orders hereinbefore prayed for shall run against such carriers.

(7) That the court make such other and further order or orders as is meet and proper in the premises.

(R. 16–17.)

After full argument, the lower court, on February 14, 1928, entered an order denying the application for an interlocutory injunction (R. 236), and on March 8, 1928, an appeal to this court was allowed. (R. 239.)

SPECIFICATIONS OF ERROR

Appellants have assigned 15 errors (R. 241–244) which we believe may be summarized as follows:

(1) The Commission was without authority to regulate *all* the intrastate rates by changing them to the same level as the interstate rates, because of a difference in *some* rates, interstate and intrastate, there being no evidence of any burden on interstate commerce as to the larger portion of the intrastate rates.

(2) The Commission condemned intrastate rates in Alabama by comparing them with rates it fixed in its report of July 19, 1926, when as to such rates so fixed there had never been a hearing concerning their relationship to the rates intrastate in Alabama.

(3) The order of the Commission is void because it is general and indefinite in character.

(4) The making of a single mileage scale of rates for both single and joint-line hauls is unjust and unreasonable, and is contrary to the law and the evidence,

(5) The Commission acted arbitrarily in ordering fixed maximum and minimum rates applicable intrastate in Alabama while permitting the carriers to regard the interstate rates as but maximum rates.

(6) The Commission acted arbitrarily because its order is applicable to domestic rates only, when, without a consideration of

import rates, it is impossible to know whether a particular rate intrastate discriminates against any interstate rate.

(7) The Commission made its order applicable to short-line railroads without any evidence to support such action.

SUMMARY OF ARGUMENT

I. The issues laid by the complaints and the Commission's own order of investigation included (1) the reasonableness of the existing interstate rates and a determination of reasonable rates for the future, (2) whether the Alabama intrastate rates resulted in unjust discrimination against persons and localities in interstate commerce, and (3) in unjust discrimination against interstate commerce. The voluminous record in the consolidated cases contains much evidence specifically directed to each of those issues. Therefore the findings of the Commission, and its orders issued thereon, are fully supported by the evidence of record, and are not in excess of its authority or otherwise unlawful.

(a) There is no ground upon which to rest a contention that the Commission's action is confined to Section 3, because the petition of the carriers before the Commission specifically alleged that the intrastate rates in Alabama resulted in unjust discrimination both as against persons and localities in interstate commerce (Sec. 3), and against interstate commerce (Sec. 13, pars. 3 and 4), specifying and invoking both those sections. (b) The power of the Commission to require increases in the in-

trastate rates is a mere incident to the power of Congress, under the commerce clause, to regulate interstate commerce; hence, the orders are not violative of that clause of the Constitution, nor of Section 1 (a) of the Interstate Commerce Act. These contentions were settled in the *Shreveport Case*, 234 U. S. 342, 358, and *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 588–590.

II. The contention that there was no hearing by the Commission concerning the lawfulness of the relation between interstate rates and the intrastate rates, hence, a denial of due process of law, must be rejected; the record demonstrates that complete hearings were had, and fully supports the Commission's condemnation of the intrastate rates in its report of July 19, 1926. It is immaterial that its formal order thereon was not issued until October 3, 1927, after appellants had been afforded ample opportunity to cooperate with the Commission in removing the discrimination. *New England Divisions*, 261 U. S. 184, 200.

III. Upon authority of the *Wisconsin Case, supra*, the Court will reject the contention that the orders are invalid for indefiniteness and generality. Moreover, the contention is without merit because the orders definitely describe the commodities, the rates, the points of origin and destination, the territory and the carriers affected.

IV. Whether one rate should apply to both single-line and joint-line hauls is a question for de-

termination by the Commission upon the evidence. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 550. The Commission prescribed one scale of rates for both hauls, after consideration of evidence amply supporting that finding.

V. (a) Appellants' contention that the Commission arbitrarily fixed maximum and minimum intrastate rates while prescribing only maximum interstate rates is based upon a misconception of the orders. Carriers are required to publish interstate rates "not to exceed" those prescribed by the Commission, and intrastate rates "which shall not be less, for corresponding distances, than the (interstate) rates contemporaneously applied by said carriers."

(b) The Commission did not act arbitrarily in failing to prescribe import rates. Neither the order of investigation nor the complaints embraced foreign commerce.

(c) The argument that the Commission acted without evidence and "beyond the issues" with respect to the weak or short lines included in its order of December 22, 1927, ignores quantities of evidence submitted by several witnesses, concerning financial condition, volume of traffic, percentage of fertilizer traffic to total, and transportation conditions of the short-line railroads, in addition to the testimony concerning the reasonableness of their rates; 275 carriers were named respondents in the order instituting the investigation, most of whom were short

lines, and many operating in Alabama, and appellants acquiesced in higher rates for them. (R. 845.) Separate and specific evidence concerning each short line is not essential to the validity of the Commission's order. *O'Keefe* v. *United States*, 240 U. S. 294, 302–303.

I

THE FINDING OF THE INTERSTATE COMMERCE COMMISSION THAT THE MAINTENANCE OF LOWER INTRASTATE RATES ON FERTILIZER AND FERTILIZER MATERIALS IN ALABAMA THAN THE CORRESPONDING INTERSTATE RATES WOULD BE UNLAWFUL WAS JUSTIFIED BY THE RECORD

(a) The action of the Commission in this case is not confined to Section 3 of the Interstate Commerce Act, but embraces also Section 13 (3) and (4) of that Act

We understand the language contained in the 4th assignment of error that the lower court erred—

> In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein because there was no substantial evidence before the Interstate Commerce Commission that the rates on fertilizers and fertilizer materials within the State of Alabama violated Section 3 of the [fol. 138] Acts to Regulate Commerce when such rates are compared with the scale of rates fixed by the Interstate Commerce Commission in its opinion of July 19, 1926. (R. 242.)

indicates on the part of appellants the purpose of confining the Commission's action to section 3

of the Act, but this not only overlooks the language of the petition of the carriers operating intrastate in the state of Alabama filed with the Interstate Commerce Commission on July 30, 1924 (R. 188–201), complaining of the discriminatory character of the Alabama intrastate rates, and which specifically invoked the provisions of section 13 of the Act (R. 196), but also the language of the Commission in its report in this case. In their petition to the Commission the carriers averred:

> Petitioners aver that the rates prescribed by the Alabama Public Service Commission, in its said order of May 26, 1924, on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for intrastate application between points in the State of Alabama, and now in effect, give an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Alabama on the one hand, and persons and localities in interstate commerce on the other hand, and are unjustly discriminatory against interstate commerce and place an undue burden upon interstate commerce, in violation of Section 3 and subdivisions 3 and 4 of Section 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920.
>
> (R. 196.)

In the Commission's report (113 I. C. C. 389, R. 36–105) it is, among other things, stated:

> We come now to a consideration of the petitions of the carriers alleging undue prejudice against interstate shippers and localities and unjust discrimination against interstate traffic, in violation of sections 3 and 13 of the interstate commerce act, by reason of the intrastate rates maintained in Alabama, Georgia, and South Carolina. * * *.
>
> (R. 91.)

The finding of the Commission with respect to the Alabama intrastate rates is expressed in its report of July 19, 1926 (113 I. C. C. 389), as follows:

> With respect to these intrastate cases we find:
>
> 1. That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce.
>
> (R. 101.)

A comparison of this language with the wording of Section 13 (4) of the Act, as above set forth, shows the great similarity between the two and leaves no room for doubt that not only was Section 13 invoked by the carriers before the Commission but that it was actually the basis used by the Commission for its action in the premises.

Furthermore, decisions of this court are to the effect that when a party applies to the Commission for relief under the Interstate Commerce Act and makes allegations tending to show violations of that Act, the Commission must make such an investigation in the premises as will enable it to pass intelligently upon the questions presented and grant any relief to which it finds the complainant entitled, regardless of any allegation, or lack of allegation, in the complaint concerning the section of the Act under which relief is sought. In *Chicago, R. I. & P. Ry.* v. *United States*, 274 U. S. 29, at pages 36–37, the Court said:

> *Fourth:* In disposing of the final objection, little need be said. The contention is that the commission was without power to predicate its order on paragraph (13) of Section 6 of the Act, because there is no formal reference in the complaint to that paragraph nor an order for an investigation under it on the commission's own motion. But the allegations of the complaint in matters of fact were sufficient to authorize the commission to consider the case under that provision as well as others; and this is enough. *To plead the law relied on, is no more necessary in a proceeding before the commission than it is in a judicial proceeding.* (Italics ours.)

From the above it is clear, we submit, that the Commission rightly considered Section 13 (3) and (4) in its decision in this proceeding, and no basis

exists for contending its action is confined to Section 3.

(b) The action of the Commission does not violate the Commerce Clause, Section 8, Paragraph 3, Article I, of the Constitution

The objections made here (Assignment of Errors 2 and 3—R. 242) that the Commission's order of October 3, 1927, violates the Commerce Clause of the Constitution, and Section 1, subdivision 2(a), of the Interstate Commerce Act providing that the Act shall not apply

> (a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

are disposed of by the decision of this court in *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, at pages 588, 589–590, where the court, in overruling similar contentions, said:

> It is objected here, as it was in the *Shreveport Case*, that orders of the Commission which raise the intrastate rates to a level of the interstate structure violate the specific proviso of the original Interstate Commerce Act repeated in the amending acts, that the Commission is not to regulate traffic wholly within a state. To this, the same answer must be made as was made in the *Shreveport Case* (234 U. S. 342, 358), that such

orders as to intrastate traffic are merely incidental to the regulation of interstate commerce and necessary to its efficiency. Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them. Commerce is a unit and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso.

* * * * *

* * * Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may,

> therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. *Wilson* v. *Shaw*, 204 U. S. 24; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525; *California* v. *Central Pacific R. R. Co.*, 127 U. S. 1, 39. In such development, it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field.

Coming now to the allegation that the action of the Commission, in finding unjust discrimination and undue prejudice to persons and localities in interstate commerce caused by the maintenance of the lower Alabama intrastate rates, is not based on substantial evidence (R. 241), we believe that this necessitates, to a certain extent, a review of the testimony introduced before the Commission.

The testimony of Mr. Drescher, assistant to the vice president of the Louisville & Nashville Railroad Company, covers pages 441 to 482 of the printed record and the exhibits introduced by him in support of his testimony, Numbers 157 to 195, inclusive, are there explained. By this testimony Mr. Drescher traced the history of the freight charges assessed on fertilizers and fertilizer materials moving between points in Alabama from

1907 down to the time of the hearing, April, 1925 (R. 443–447); showed that the scale of rates on these commodities prescribed by the Alabama Commission in 1924 had taken away from the carriers most of the increase which they were granted in 1920 under *Ex Parte* 74, 58 I. C. C. 220 (R. 447); compared the rates on fertilizer which the Alabama Commission prescribed with the normal interstate rates maintained by the various Southern lines between Southern points (R. 449–450); showed that out of a total of 2,355 rates the Alabama scale is less than the interstate rates shown on the exhibit in 2,145 instances, higher in 182 instances, and the same in 28 instances (R. 450); showed that the substitution of the Royster scale, which is the scale that carriers propose, for the present interstate rates from these manufacturing points to destinations named will produce 1,114 reductions, 963 advances, and 278 instances in which there will be no change in the present rate (R. 450); called attention to the fact that the rates from Birmingham to stations on the Louisville & Nashville are very much less than the rates for corresponding distances from Nashville, Tenn., as illustrated by rates[1] from Birmingham to Athens, Ala., for 98 miles of $1.95 and from Nashville to an equi-distant station in Alabama, Elkmont, $2.59; showed that the rate from Birmingham to Elk-

[1] See small map in Appendix, p. 77, of this brief, to follow these rates.

mont, 107 miles, was $2.05, and from Nashville to Athens, the same distance, $2.59, and testified that there had been carload shipments in 1925 from Birmingham to stations in Alabama shown on the exhibit as follows: Trafford, Hayden, Blount Springs, Garden City, Haneeville, Cullman, Falkville, Hartselle, Decatur, Athens, and Elkmont. (R. 453.)

Mr. Drescher further testified that the rates from Nashville are higher for corresponding hauls than the rates from Birmingham; that the dip in the rates to the station that is as far from Nashville as Aspen Hill, Tenn., is from Birmingham is due to the low measure of the rate from Nashville to Decatur, which is the equi-distant point from Nashville, and that that rate is now $2.25 per ton and is less than the rate to points on either side of Decatur. (R. 454.) The witness also showed that the rate from Decatur, Ala., to Cullman, Ala., 32 miles south of Decatur, was $1.30, while to Prospect, Tenn., 30 miles north of Decatur, the rate is $1.69. (R. 460.) The witness' exhibit No. 170 showed the present rates from Decatur, Ala., versus Chattanooga, Tenn., to agency stations on the Southern Railway in Alabama between those two points, and further showed that Decatur is now able to ship into these Alabama points at rates very much less than Chattanooga to equi-distant points on the same line of railroad. To illustrate, Mr. Drescher called attention to the $1.65 rate from

Decatur to Scottsboro, Ala., for 66 miles, as against a rate of $2.10 for the same distance from Chattanooga, Tenn., to Lim Rock, Ala.; that the midway points would be Gurley, Ala., from Decatur, and Cedar Grove, from Chattanooga, and that the rate from Decatur to Gurley, Ala., is $1.40, and from Chattanooga to Cedar Grove is $1.80, a difference of 40 cents a ton in favor of the intrastate shipper. (R. 455.) Mr. Drescher further called attention to the adjustment from Decatur, Ala., versus Corinth, Miss., to intermediate agency stations on the Southern Railway, as shown by exhibit 176. This exhibit illustrates the advantage in rates to Alabama points possessed by Decatur over Corinth, Miss., for like hauls. (R. 458–459). Exhibit No. 178, dealing with the adjustment prevailing from Mobile, Ala., and Pensacola, Fla., to stations on the Louisville & Nashville as far north as Montgomery, shows the decided advantage that Mobile has to the greater portion of this territory. (R. 459–460.) Comparisons also were submitted showing the rate relation between the following points on the lines mentioned:

Birmingham, Ala., as compared with Atlanta, Ga., at intermediate points on the Southern Railway (exhibit 173) (R. 458); Montgomery, Ala., as compared with Richland, Ga., at intermediate points on the Seaboard Air Line (exhibit 174) (R. 458); Montgomery, Ala., as compared with Columbus, Ga., at intermediate points on the Cen-

tral of Georgia Railway (exhibits 175 and 180) (R. 458, 460); Birmingham, Ala., as compared with Tupelo, Miss., at intermediate points on the St. Louis-San Francisco Railway (exhibit 177) (R. 459.) At a later hearing Mr. Drescher further testified concerning the movement of fertilizer in cars and in tons from the Alabama shipping points and interstate shipping points covered by his earlier testimony. (R. 602.) Concerning the rate situation in Mississippi as compared with Alabama, Mr. C. W. Hayward, representing the Meridian, Miss., Traffic Bureau, said:

> In my exhibit 442, I show a comparison of the rates from Meridian, Mississippi, to points in Alabama and Georgia, compared with rates for similar distances from Montgomery and Atlanta points in Alabama, Georgia, and Mississippi.
>
> The rates as shown from Montgomery were taken from the Atlanta & West Point Fertilizer Tariff, 1035-B, I. C. C. 1145, and are specific rates. Since this statement was prepared, I understand that the Alabama Commission has adopted a scale of mileage rates, and there may be some differences as between the rates I have shown and those adopted by the Commission, if so, I will submit a correct exhibit.
>
> Fertilizer was in the Meridian Case. As to what was done with the rates on fertilizer in the prescribed zone in Alabama in that case: I will explain that. On my Exhibit 441, the rates to Alabama Great Southern

and Southern Railway stations, and Mobile & Ohio stations as shown, were the rates as prescribed by the Commission in I. C. C. Docket 9560.

They are the rates that now apply from Meridian to the zone covered by the Commission's order in the original Meridian Case, 200 miles from Meridian by way of the lines of the respective defendants. Now, those rates, so far as the jobbing points in Alabama, affected by the Commission's order are concerned, are equalized with Meridian, but it will be recalled that the Commission has only recently voided their order in the Meridian Case. Now, we apprehend that it is entirely possible and not altogether improbable that rates will be established by the State of Alabama or the Public Service Commission of Alabama within the Meridian zone that will be in accord with the scale that was prescribed by them for application between other points in the State, and if that is done, it will be easy to see the effect on Meridian.

The last column, which is the National Fertilizer Association's proposed scale, and is the same as the Alabama scale, will indicate to what extent we will be affected unless an equalization is accomplished by an order of the Commission, and the Alabama Public Service Commission adopts these rates within the Meridian rate case zone.

In my exhibit No. 442 it will be seen that the rates from Montgomery and Atlanta into Alabama, Georgia and Mississippi for dis-

tances, similar distances from Meridian to points in Alabama and Georgia, are materially lower than the rates from Meridian. After we pass 100 miles on this scale, the rates from Meridian and the rates from Montgomery, Alabama, are both interstate rates; we have from Meridian to Atlanta for 319 miles the rate of $3.60, and from Atlanta to Meridian for the same distance, of course, a rate of $3.15, so without going into detail and stressing this comparison, Mr. Examiner, we want to repeat our statement that we think equalization should be effected, that these discriminations should not be permitted, that we do not see any reason for maintaining a higher rate from Alabama to Meridian, than from Meridian to Atlanta. And, by the same token, any lower rates from Montgomery and Atlanta towards Meridian than from Meridian in the opposite direction over the same rails.

We have a large fertilizer factory in Meridian. They operate three factories, one in Meridian, one at Hattiesburg, and one at Shelbyville. And fertilizer is a commodity that is not necessarily limited to a restricted zone of distribution. The Meridian Fertilizer Factory can and does ship into Alabama, Georgia, Florida, and all over the Southeast, wherever they may place their product, and I do not know to what extent, whether they do to a very large extent, but it is not a commodity that is limited in its distribution.

> As to the movement into Mississippi, I know that there has been a movement from Alabama—possibly Montgomery, Alabama, into plants surrounding Meridian, into our trade territory and that has been possibly largely because of these discriminations in favor of the Montgomery shipper, the Alabama shipper. (R. 743–744.)

Much more testimony of similar import is in the record, but we believe we have summarized enough of it to show that the action of the Commission was warranted. This testimony showed the situation not only with reference to "certain rates along the border lines of Alabama and Georgia and of Alabama and Tennessee," concerning which appellant says there is a "possibility" of some discrimination (R. 13–14), but also along the border lines of Alabama and Mississippi on the west and Alabama and Florida on the south, thus covering the entire state of Alabama. Upon being asked why he did not carry around the borders of the State illustrations of discrimination, Mr. Drescher stated the reason for that to be the fact that he did not find a fertilizer factory just a short distance across the State line. (R. 476.) This testimony follows:

> "Q. I was just wondering why you did not carry around the borders of the State those illustrations of discrimination. You have left off the Mobile & Ohio and the Illinois Central—what was the purpose of that?

"A. I think the reason I did that was because I did not find a fertilizer factory just a short distance across the State line."

* * * * *

I spoke about the Illinois Central and the Mobile & Ohio, and said I thought the reason why I had left those out was because I could not find a fertilizer factory near the boundary; the Mobile & Ohio runs from Corinth, and Corinth is one of the points used in the case of the Southern; I used Corinth versus Decatur on the Southern Railway. The Mobile & Ohio also runs from Columbus right near the border; it gets into Columbus.

I don't recall whether there is a fertilizer factory at Columbus, or not. (R. 476–477.)

Mr. Drescher stated he knew of no transportation conditions existing that would warrant these abrupt breaks in the rates at the State lines, and that the only explanation he had for it was the action of the Alabama and Georgia state commissions in making lower rates between points within those states. (R. 456–7.) Witness McConnell, for the Central of Georgia Railway, on this point said (R. 495):

There is no such dissimilarity in the transportation of circumstances and conditions surrounding the handling of intrastate traffic on the one hand as compared with interstate traffic on the other than [that] in my opinion would justify a difference in rates; I know of no transportation condition that

warrants a different rate when a state line is crossed.

On this point the Commission, in its report of July 19, 1926, found:

> * * * the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls. (R. 93.)

The testimony for the Alabama Public Service Commission was presented by Mr. Alldredge, the head of its transportation department. In his testimony he stated that he appeared for the dual purpose of sustaining the Alabama rates in the 13th section case and to establish their reasonableness for general application on interstate traffic throughout the southeastern territory. (R. 812.) Mr. Alldredge's testimony covered the main considerations prompting the Alabama Commission in prescribing the scale of rates it did. (R. 812–819.) He also testified as to the elements to be considered in grading a fertilizer scale (R. 819–822); and that the Alabama Commission was influenced by the fact that average loadings of fertilizer had risen from 17 tons to 23 tons per car. (R. 817.)

Mr. Cooper, an accountant of the Alabama Public Service Commission, compiled and introduced certain exhibits, and testified concerning them, showing statistics in regard to the fertilizer movement in Alabama (R. 832); including percentage of fertilizer revenue of the total revenue (R. 833); the fertilizer traffic originated by Class I roads

(R. 834); the average weights per car of fertilizer originated and carried by Class I roads (R. 834); average hauls (R. 834–5); average receipts per ton-mile (R. 835); etc. The testimony of these witnesses, and other comparisons contained in the more than 500 exhibits[4] introduced in the proceedings before the Interstate Commerce Commission, constitute evidence upon which the Commission could base its finding (*Western Chem. Co.* v. *United States*, 271 U. S. 268, 271) that the lower intrastate rates in Alabama constituted the undue prejudice against interstate commerce condemned by the Act and which it was the Commission's duty, after hearing, to remove. The *Western Chemical Case, supra,* is also authority for the holding of the Supreme Court that it is beyond the court's province to consider the weight of the evidence. (P. 271.)

The voluminous record before the Commission affords an adequate basis for its condemnation of the Alabama intrastate rates contained in its report of July 19, 1926. Concerning the situation in Alabama the Commission briefly summarized the testimony before it, and then in its said report of July 19, *Fertilizers and Fertilizer Materials be-*

[4] By stipulation of the parties filed March 31, 1928 (R. 1030–1033), it was agreed that in making up the record for this court the 500 exhibits introduced before the Commission need not be printed in full, but that if either party intends to rely on any of said exhibits, they shall be printed in the briefs. (R. 1033.) (See Appendix to this brief for exhibits referred to herein.)

tween Southern Points, 113 I. C. C. 389, at pages 431 and 432 (R. 91–93), among other things, stated:

> Taking up, first, the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment. In conjunction with the present rates are shown also the rates under the single-line Royster scale and under the scale herein found reasonable, for the distances shown:

From—	To—	Distance	Present rates	Royster scale	Scale herein prescribed
		Miles	*Cents*	*Cents*	*Cents*
Tupelo, Miss.	Glen Allen, Ala.	72	230	214	200
Birmingham, Ala.	do	71	170	214	200
Chattanooga, Tenn.	Larkinsville, Ala.	62	210	203	185
Decatur, Ala.	do	60	115	203	180
Nashville, Tenn.	Elmont, Ala.	96	270	209	225
Birmingham, Ala.	do	107	205	239	235
Columbus, Ga.	Superior, Ala.	46	203	180	165
Montgomery, Ala.	do	49	143	180	165
Columbus, Ga.	Alexander City, Ala.	75	237	214	200
Birmingham, Ala.	do	82	180	237	210
Rome, Ga.	Anniston, Ala.	63	210	203	185
Birmingham, Ala.	do	63	160	203	190
Atlanta, Ga.	Heflin, Ala.	85	200	237	210
Birmingham, Ala.	do	82	180	237	210

> In the foregoing table, destinations have been selected approximately equidistant from the respective origins, but for other distances the intrastate and interstate rates bear a similar relation. Manufacturing

> plants are located at all the originating points shown, and the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls.
>
> (R. 91–93.)
>
> While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful.
>
> (R. 93.)

To our minds this brings the action taken by the Interstate Commerce Commission clearly within the rule approved by this court in the *Wisconsin case, supra,* at page 579, where it said:

> First. The report and findings of the Commission undoubtedly show that the intrastate fares work an undue discrimination against travellers in interstate commerce and against localities (*Houston East & West Texas Ry. Co.* v. *United States,* 234 U. S. 342) in typical instances numerous enough to justify a general finding against a large class of fares. * * * Any rule which would require specific proof of discrimination as to

each fare or rate and its effect would completely block the remedial purpose of the statute.

See also *New England Divisions case*, 261 U. S. 184.

In speaking of the power conferred upon the Commission by Sections 13 (3) and (4) and 15a of the Interstate Commerce Act, the court, in the *Wisconsin case*, said, at pages 584–586:

> Under Title IV, amendments were made to the Interstate Commerce Act which included section 13, paragraphs 3 and 4, and section 15a, already quoted in the margin. The former for the first time authorized the Commission to deal directly with intrastate rates where they are unduly discriminating against interstate commerce—a power already indirectly exercised as to persons and localities, with approval of this court in the Shreveport and other cases. The latter, the most novel and most important feature of the act, requires the Commission so to prescribed rates as to enable the carriers as a whole, or in groups selected by the Commission, to earn an aggregate annual net railway operating income equa' to a fair return on the aggregate value of the railroad property used in transportation. For two years, the return is to be 5½ per cent with ½ per cent for improvements, and thereafter is to be fixed by the Commission
>
> • • • • •
>
> It is manifest from this very condensed recital that the act made a new departure.

Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill.

Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty per cent of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the in-

terstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. Section 15a confers no power on the Commission to deal with intrastate rates. What is done under that section is to be done by the Commission "in the exercise of its power to prescribe just and reasonable rates," *i. e.*, powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates. When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, or unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words.

From what we have said it is apparent therefore that the action of the Commission in making the order was not arbitrary or without evidence which suppports fully the findings upon which the order is based, but that instead it adopted and followed a

procedure already approved by this court in the *Wisconsin case, supra.*

II

FULL HEARINGS WERE ACCORDED BY THE COMMISSION AND THERE WAS NO DENIAL OF DUE PROCESS OF LAW

Appellants 5th assignment of error (R. 242) states that the lower court erred:

> 5. In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders condemned intrastate rates in Alabama in comparison with rates fixed by the Interstate Commerce Commission in a report dated July 19, 1926, when as to such rates so fixed there had never been any hearing concerning their relationship to the rates intrastate in Alabama.

In its report of July 19, 1926, the Commission stated that dissatisfaction on the part of shippers and users as well as of carriers with the rates on commercial fertilizer and fertilizer materials in southern territory had for some time been increasingly evident (R. 36), and as a result it instituted a general investigation into the matter. (R. 36–37.) This general investigation was given Docket No. 16295, and in this case shippers of fertilizer and fertilizer materials proposed rates and minimum weights thereon, for use in southern territory, the same as, or based on, those prescribed by the Alabama Commission on intrastate shipments

(113 I. C. C. 389, 404) (R. 57), which rates the carriers contend are unduly low (113 I. C. C. 389, 406) (R. 59), and counter with the proposal that a distance scale of rates, based on the *Royster Guano decision*, 50 I. C. C. 34, be applied for uniform application throughout southern territory. (113 I. C. C. 389, 394.) (R. 40.) Concerning the Alabama scale of rates proposed by the shippers the Commission stated in its report (R. 58):

> One of the shippers' principal witnesses admitted that the rates which they propose are, with the exception of rates within Mississippi and for short distances in Georgia, lower than any existing fertilizer rates in southern territory that have been prescribed either by us or by State commissions.

The examiner in his proposed report drafted a scale higher than the shippers' scale and lower than the carriers' scale. On this point the Commission in its report said (R. 76):

> * * * In his proposed report the examiner recommended a scale somewhat higher than the shippers' scale and somewhat lower than the carriers'. Upon argument the carriers conceded that the scale so recommended would about maintain their aggregate revenues. But our decision can not properly be predicated solely upon an attempt to average existing rates and maintain revenues. It is here our duty to determine what are

> maximum reasonable rates and to prescribe such rates, whether the effect be to increase or reduce the carriers' earnings. The traffic test furnishes evidence as to the level of existing rates, both interstate and intrastate, on fertilizer in southern territory; but while this evidence is entitled to weight in arriving at maximum reasonable rates it is not controlling.

The Commission then prescribed a scale somewhat different from that recommended by its examiner, and said (R. 82):

> Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, and having in mind the principles which we believe should be applied in distributing the burden of rail transportation and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted.

As we understand the contention of appellants now being discussed, it is that as the interstate scale prescribed by the Commission in its report and order of July 19, 1926, differs from the interstate rates charged on fertilizer and fertilizer materials before that date, the Commission acted arbitrarily and beyond its authority in finding that the intra-

state rates in Alabama, as compared with the interstate scale the Commission prescribed in its order of July 19, would cause undue prejudice and unjust discrimination against interstate commerce; in other words that the condemnation of the Alabama rates by comparing them with the new scale of interstate rates prescribed by the Commission in Docket 16295 was beyond the issues and deprived appellants of due process of law in that they were not accorded a full hearing on that matter.

The order of the Commission of October 14, 1924 (R. 207), instituting this general investigation covered, among other things,

> what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners [carriers], in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist;

The findings and conclusions upon which the Commission's order of July 19, 1926, are based are matters concerning which the court will not substitute its judgment for the judgment of the Commission. *United States* v. *New River Co.*, 265 U. S. 533, 542. Nor will the court "examine the facts further than to determine whether there was substantial evidence to sustain the order." *Interstate Com. Com.* v. *Union Pacific*, 222 U. S. 541, 548. As pointed out by this court, in *Virginian Ry. Co.* v. *U. S.*, 272 U. S. 658, at 665:

> The finding of reasonableness, like that of undue prejudice, is a determination of a fact by a tribunal "informed by experience." *Illinois Central Railroad Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454.
>
> This court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or with the alleged inconsistency with findings made in other proceedings before it. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541.

As we have pointed out, appellants were given a full hearing by the Commission on the questions at issue before it. In accordance with its established practice in such cases, the Commission permitted appellants, as well as interested shippers, communities, and localities, to participate in the hearings; and appellants were represented by counsel and took a prominent part in the proceedings. That counsel was permitted to introduce whatever revelant evidence he wished bearing upon the subject matter; to cross examine witnesses; to make objections to questions; to file briefs; and to participate in the oral argument before the Commission at Washington, causing the Commission in its report of July 19, 1926, to say:

> The State commissions of Alabama, Georgia, Florida, Mississippi, Kentucky, and North Carolina were represented at the hearings, and they took an active and helpful part in developing the record. (R. 37.)

The various hearings accorded by the Commission constituted a full hearing. As stated in the *New England Divisions Case*, 261 U. S. 184, 200:

> A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken.

And in the same case, at page 201, the court said:

> A hearing may be a full one, although the evidence introduced does not enable the tribunal to dispose of the issues completely or permanently; and although the tribunal is convinced, when entering the order thereon, that, upon further investigation, some change in it will have to be made.

The step proposed to be taken by the Commission in this proceeding, as clearly shown by its order instituting the general investigation, was

> * * * into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, applicable between points in the territory described in the next following paragraph, with a view to determine whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

Under Section 13 (4) of the Interstate Commerce Act it is made the duty of the Commission where it finds undue or unreasonable preference, prejudice, or discrimination against interstate commerce, caused by the lower intrastate rates (as it did in this proceeding, 113 I. C. C. 389, at 435) (Rec. 101), to

> prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, * * * in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination.

Under this provision of law it is undoubted that the Commission could have, in its order of July 19, 1926, required the removal of the unjust discrimination against interstate commerce and the undue prejudice to persons and localities in interstate commerce found by it to exist due to the maintenance of intrastate rates in Alabama on a lower basis than the corresponding interstate rates it found reasonable therein. Instead, however, the Commission left it to the Alabama authorities to " cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment." (R. 102.) The failure of the Commission to exercise at that time the full power conferred upon it by the statute is not to be construed as an admission against it that it lacked that power, especially when it had before

it the suggestion of this court in the *Wisconsin case, supra*, at page 591, that

> • • • when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the state commissions power to deal with them and increase them or reduce them in their discretion.

The Commission had a right to assume that the Alabama Commission would remove the undue prejudice and discrimination found by it to exist and that it would not be necessary to do more in the premises.

The claims of appellants that the Commission's action was beyond the issues and that they were not accorded a full hearing are without merit.

III

THE ORDER OF THE COMMISSION IS DEFINITE IN CHARACTER

Since Section 13, paragraphs 3 and 4, was added to the Interstate Commerce Act by the Transportation Act of 1920, these paragraphs have been construed by this court in several cases, and the leading case in this connection of course is the *Wisconsin case*, 257 U. S. 563. Almost every word of the decision of the court in the *Wisconsin case* is appli-

cable here, because the orders in both cases are in substance the same. In addition, an actual examination of the order will show it is definite because in the order, the classes of traffic to be affected by the intrastate rates and charges to be put in force are definitely described, the carriers which are required to comply with the terms of the order are plainly designated, and the territory within which the rates and charges are to be applied is pointed out with certainty. (R. 24–25.)

IV

IN PRESCRIBING A SINGLE-LINE SCALE OF RATES FOR BOTH SINGLE AND JOINT-LINE HAULS THE COMMISSION'S ACTION WAS JUSTIFIED AND WAS NOT ARBITRARY IN CHARACTER

Assignment of Error No. 7 (R. 242–3) alleges that the lower court erred:

> In not enjoining the orders of the Interstate Commerce Commission sought to be enjoined herein, which orders prescribed one class of rates applicable both to single-line and joint-line hauls, for the reason that the issues and testimony presented to that Commission in the cause in which such orders were entered related solely to the establishment of two classes of rates, one applicable to a single carrier and one applicable to two or more carriers joining in the same haul, such orders of the Commission being without evidence to support them and being entered in violation of the fifth amendment to the Constitution of the United States and

the laws of the United States which give petitioners a full hearing in due process of law.

Under date of March 9, 1925, before any hearings had been held in this proceeding, a notice (R. 216–219) signed by Commissioner Eastman, in charge of the case, was issued to all interested parties, stating in a general way what would be expected to be developed at the hearings, and, among other things, appears the following:

> 12. What, if any, should be the differentials between single-line and joint-line rates? (R. 218.)

On this question the Commission in its report said:

> Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint-line than for single-line hauls. The carriers would maintain such a difference for all hauls, while the shippers would have it disappear at 500 miles. In the *Southern Class Rate Investigation, supra*, we prescribed the same class rates for both classes of hauls, making the scale for this reason somewhat higher than it would have been if prescribed for single-line hauls only. In general the parties are in accord that whatever rule for computing distances is applied in connection with class rates shall be employed also for determining the rates here in issue. In our second supplemental report in the *Southern Class Rate Investigation*, 113 I. C. C. 200, decided July 19, 1926,

we found that in computing distances the shortest routes should be used over which carload freight can be moved without transfer of lading, making the scale somewhat higher than if the "shortest workable" routes had been used as the measure. Carriers and most shippers agree that some definite rule for the computation of distances which may be applied without the exercise of judgment is desirable, inasmuch as it lessens the time and expense of preparing rates for publication and avoids controversies as to the proper rate-making distances. Unquestionably, also there are many practical advantages in adopting a uniform rule for computing distances. When one basis is adopted and consistently adhered to, distances once computed may be applied for the ascertainment of rates on any commodity or class, where distance scales are employed.

In a general way the same principle applies to the question of whether rates for joint-line service should be made higher than those for single-line service. If on one commodity arbitraries for joint-line service be employed, while on another commodity one scale is used for both single-line and joint-line service, the distance which determines the rate between particular points will often be different in one case from that in the other. There will also be like variations as between different commodities on which joint-line arbitraries are applied, depending upon the volume of the arbitrary as

compared with the volume of the single-line rate to which it is added.

Manifestly where no additions are allowed for joint-line service and where short-line distances are used as [the measure] the single scale should be correspondingly increased. As above noted, of the total fertilizer traffic covered by the traffic test, single-line rates were applied to 67 per cent. Joint-line arbitraries were therefore applied to only about one-third. It is also true that where joint-line arbitraries are used the carriers in many instances do not secure the full amount of the arbitrary nominally applicable for any given distance, for often slightly longer single-line routes will determine the applicable rates. Under the circumstances the elimination of joint-line arbitraries will require a comparatively small increase in the single-line scale. (R. 80–81.)

The fact that both carriers and shippers proposed arbitraries to be used in constructing joint-line rates is unimportant. The Commission's notice of March 9, 1925, above referred to, invited the introduction of evidence as to what differentials, if any, should obtain between joint-line and single-line rates. (R. 218.)

Pertinent evidence submitted to the Commission on this point includes: Testimony showing that Class I roads in southern territory proposed to shippers a scale of rates to apply uniformly for single and joint-line hauls (R. 248); a scale of rates

proposed by the Freight Traffic Manager, L. & N. R. R., the joint-line rate under this proposed scale being generally 34 cents higher than the single-line rate (R. 258); exhibit 35, showing rates on fertilizer, carloads, between points in the state of Mississippi, which are generally applied for single-line movement throughout the State (R. 374); testimony showing rates between various points and whether single or joint-line hauls were used (R. 419–420); exhibit 158, showing rates, carloads, proposed by the Alabama carriers for single-line application on fertilizer, in effect prior to July 25, 1924 (R. 444); exhibit 157, showing the scales of rates prescribed by the Alabama Commission for single and joint-line application over the so-called standard roads operating within that State (R. 442–3); exhibit 164, comparing interstate rates on fertilizer from manufacturing points in Alabama for single-line application up to 200 miles from the manufacturing points, with the rates on basis of the Alabama Commission's scale and on basis of the third Royster scale (R. 449); testimony to the effect that by far the bulk of the fertilizer traffic in Georgia moves over a single-line scale (R. 498); exhibit 212, showing present and proposed local mileage single-line rates on fertilizer between points in Florida as compared with the proposed Royster scale (R. 515); and exhibit 243, showing present rates, carloads, on fertilizer, for single-line application, as now effective between points in North Carolina intrastate as well as between points

in Virginia intrastate (R. 562–563). Further, the Commission, in its report of July 19, 1926, concerning fertilizer rates in official territory, said:

> The joint-line rates in this territory are on the same level as the single-line rates. (R. 48.)

Reference is made to the following pages of the record in connection with the single-line scale prescribed by the Commission: 563, 565–566; 569; 570; 577; 584; 685–690; 694; 756–758, and 844.

This court, in *Int. Com. Com.* v. *Union Pac. R. R. Co.*, 222 U. S. 541, used pertinent language in this connection when it said at page 550:

> With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive. * * *

The above is directly contrary to the allegation (R. 242) that there was no evidence upon which the Commission could properly base a single scale applicable both to single-line and multiple-line hauls.

V

OTHER OBJECTIONS TO THE ACTION OF THE COMMISSION

(a) The contention that the Commission acted arbitrarily in ordering fixed maximum and minimum rates in Alabama while permitting the carriers to regard the interstate rates as but maximum rates is without merit

In prescribing the mileage scale for interstate application, the Commission fixed rates of "not to exceed" those designated in the scale, i. e., maximum rates, but there is no restriction upon the carriers from putting in lower rates if they so desire. (R. 118–122.) The intrastate rates the Commission is requiring the carriers to put in effect in Alabama are rates "which shall not be less, for corresponding distances, than the rates contemporaneously applied by said carriers" under the order of July 19, 1926. (R. 24–25.) In other words, the same rates are to be applied intrastate as interstate, for corresponding distances, and if the carriers establish lower rates for interstate application than the maximum prescribed in the order of July 19, those lower rates must also be established for intrastate application.

The petition, paragraph 27(g) (R. 15), states that the interstate rates prescribed by the Commission are "subject to exceptions and deviations at the will of the carriers" when as a matter of fact the order of July 19 permits the carriers to "use groups of moderate extent" "*subject to the*

approval of the Commission." (R. 119.) This gives the State ample opportunity to object to any "deviations" from the Commission's order.

(b) In confining its action to domestic rates only, without consideration of import rates, the Commission did not act arbitrarily

Concerning import rates the Commission in its report, 113 I. C. C. 389, 428–429, said:

> The carriers object to consideration of the import rates in this proceeding, contending that our order did not embrace that traffic. The shippers take the opposite view. Rates on foreign commerce are not covered by the order and hence, under strict construction, the investigation does not include import rates. This point, however, is not of importance, for the shippers do not urge specific findings at this time with respect to import traffic. Both the carriers and the shippers propose a limited system of port equalization, brought about, in general, by applying the domestic-distance scales from the nearest port and placing other competing ports within reasonable limits upon the same basis. This equalization would apply only to points located some little distance from the seaboard, say, 200 miles from the nearest port. For the shorter distances the rates from each port would be made in accordance with the scale. In such equalization the Gulf ports and the south Atlantic ports are to be considered two distinct and unrelated groups.

> It seems to be the shippers' thought that the carriers should propose and submit to them for their study and suggestions a comprehensive adjustment covering import traffic. No objection was voiced by the carriers to such procedure. (R. 88–89.)

It will be noted from the above that the Commission was not asked to make any findings with respect to import rates and in fact did not include import rates in its order. If, later, further action must be taken in this respect, it will be time enough to complain of the Commission's action then.

In *New England Divisions, supra,* the court, at page 201, said:

> A hearing may be a full one, although the evidence introduced does not enable the tribunal to dispose of the issues completely or permanently; and although the tribunal is convinced, when entering the order thereon, that, upon further investigation, some changes in it will have to be made.

(c) In making its order applicable to short-line railroads the Commission's action is supported by evidence

Under Assignment of Error No. 13, appellants claim that the action of the Commission in permitting, by its First Supplemental Order of December 22, 1927, in Docket No. 16336 (R. 225, 226), certain short-line railroads named therein, 19 in number, to increase their rates on fertilizer established by the Alabama Commission, was arbitrary because beyond the issues involved in the investi-

gation and for the reason that there was no evidence to sustain its action.

Concerning the proposal of the short lines, the Commission, in its original report, 113 I. C. C. 389, at p. 411–413, said:

> The American Short Line Railroad Association, on behalf of its southeastern members, seeks a special basis of rates for these short lines because of their poor financial condition and limited traffic resources. The general basis of interstate rates on fertilizer to points on these lines is now the full combination over the trunk-line junction point. Intrastate rates are made, as a rule, on the combination basis less certain percentages, which vary in the different States. In Georgia the full combination obtains. In Alabama, on the other hand, joint rates between trunk-line and short-line points are made 10 per cent higher than the joint trunk-line scale. The local short-line rates in that State are 20 per cent higher than the rates of the standard lines, and for joint short-line hauls the same differentials are added as obtain between the single and joint standard-line rates. This Alabama adjustment is the one which the shippers propose for general application. (R. 65.)
>
> Any detailed discussion of the situation with respect to the Association lines seems unnecessary. It has received consideration in other cases, including *Southern Class Rate Investigation, supra*, where, except in a few instances, the necessities of these short

> lines were recognized. They have been accorded special treatment by most of the States and, in general, the shippers seem to favor such treatment. In 1924, according to an exhibit filed by their representative, many of these carriers had a deficit in net railway operating income and comparatively few had good earnings. (R. 67.)

The order of the Commission of July 19, 1926, as amended on April 4, 1927, required the short or weak lines to establish, maintain, and apply to—

> the interstate transportation in carloads of mixed fertilizers and fertilizer materials between points in the territory described in Appendix A to the original report herein on, or via, the so-called short or weak lines set forth in Appendix D to the original report and in Appendix DD to the supplemental report herein, including the Columbus & Greenville Railway Company, the Kinston-Carolina Railroad Company, the Carolina Railroad Company, the Gulf, Mobile & Northern Railroad Company, the Birmingham & Northwestern Railway Company, the Atlanta, Birmingham & Atlantic Railway Company, the Washington & Old Dominion Railway, the Apalachicola Northern Railroad, the Mississippian Railway, the Gainesville Midland Railway, the Milltown Air Line Railway, the Cadiz Railroad, the Mississippi Central Railroad, the St. Marys Railroad, and the Jackson & Eastern Railway, so long as said carriers remain independent of standard-line control, excepting

> only the Norfolk Southern Railroad and such short or weak lines as may be under common control or management with a standard line, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed. (R. 136–137.)

In the Commission's general investigation there were 275 carriers made respondents. (R. 210–215.) Many of these, if not most of them, were short or weak lines, and many operated in Alabama. Obviously testimony as to each one of these carriers is not required. Mr. Streyer, Traffic Manager of the American Short Line Railroad Association, appeared for the southeastern members of his organization, 78 in number. (R. 113–114.) His testimony covers pages 582–598 of the record, and, among other things, he testified as to the fertilizer tonnage the short lines handle. This witness stated that the movement of fertilizer on quite a number of short lines constituted a very considerable part of their total tonnage; that the traffic moves during a relatively short period, mostly during two or three months of the year, in large volume and has the effect of congesting the sidings of the short lines, thereby increasing the cost of handling the traffic. (R. 586–587.)

In testifying regarding the 50-cent arbitrary that the short lines requested permission to add to

the trunk line scale of rates on fertilizer, Witness Streyer stated that it would require an addition of 75 cents per ton to the scale in order to make the business profitable to the short lines but that it was felt that 50 cents a ton was as high as they could maintain on account of cross-country competition with the trunk lines. (R. 589.)

As indicating the financial condition of the short lines that are requesting the Commission to permit them to assess rates 50 cents a ton higher than the trunk line scale, Witness Streyer filed as exhibit No. 285[4] a two-page statement showing the result of operation on these lines during the calendar years 1923 and 1924. This exhibit shows the weak financial condition of the short lines and indicates their pressing needs for greater revenues.

In this exhibit are also shown for 65 short lines, the average miles main line operated, total railway operating revenue, total railway operating expenses, net revenue from railway operations, railway tax accruals, uncollectible railway revenue, railway operating income, total additions to railway operating income, deductions from railway operating income, net railway operating income, nonoperating income, gross income, deductions from gross income, net income and total investment. Exhibit 287,[4] Witness Streyer, shows, for 37 short lines, the average revenue per ton, per ton-mile,

[4] See appendix hereto for exhibits mentioned.

per car-mile, and per car, for the calendar year 1923.

In view of this showing the witness stated that should any reduction be made in the fertilizer rates, one of the leading commodities handled by these short lines, it would aggravate the existing alarming condition. (R. 588.) Illustrations of the bad conditions existing on the short lines were then given. (R. 591–596.) On behalf of the shippers, it was testified that so far as the short lines were concerned there was no opposition to generous treatment. (R. 759.) Mr. Alldredge, for the Alabama Commission, admitted the short and weak lines should have a higher basis of rates than the standard lines. (R. 845.)

In its report of July 19, 1926, the Commission also stated:

> All carriers not covered by the findings of the two preceding paragraphs shall be classed as standard. With respect to the so-called short or weak lines it may be said, as was stated in *Southern Class Rate Investigation*, 100 I. C. C. 513, 653–654, that most of these roads are situated wholly within the limits of a single State and the State commissions are in a much better position than we are to investigate and determine their needs. It is our hope that the State commissions will, either before or after the rates herein prescribed become effective, bring to our attention any instances where the special treatment accorded these short or weak lines is, in their opinion, more or less

liberal than their just needs require. (R. 85.)

So far as the record shows, the authorities of Alabama never complained to the Interstate Commerce Commission, as requested by that Commission to do in case of dissatisfaction, of the treatment accorded the short lines.

Testimony and exhibits dealing with certain of the short lines included in the Commission's supplemental order of December 22, 1927, together with many other short lines, will be found in exhibits 285[1] and 287 and record pages 599–600 and 549–560. As stated, no objection to granting the short lines special treatment was made by any party; in fact their needs for higher revenues were recognized by the shippers and the state itself, as shown by the testimony. Mr. Gill, on behalf of certain short-line carriers, testified:

> The State Commissions of Alabama, Mississippi, and Tennessee have also in the past and do now recognize these lines as requiring special treatment, and they have been, are permitted, and do now maintain higher intrastate rates than applicable over trunk lines. This is mentioned merely to illustrate that these lines, account of location, financial and physical conditions, traffic density, and nature of traffic, can not afford to operate rates in effect on strong trunk lines. (R. 556.)

[1] Please note that Ex. 285 is in 3 parts, covering pp. 97–105 of appendix to this brief.

Counsel for the fertilizer interests stated they favored "rather generous" treatment of these carriers (R. 759), and one of the principal witnesses for the fertilizer interests stated:

> It is our thought as to the entire field of inquiry, the interests we are here representing are entirely content to abide the trend of thought in the Commission as a consequence of its more general study of that [the short line] problem. (R. 758–759.)

Intrastate revenues have an important part to play in the maintenance of an adequate national transportation system, *Wisconsin case, supra*, and no objection being made to higher rates for the short lines, the Commission was justified in the course it pursued. It seems to be the amount of the differential to be accorded the short lines, rather than the fact that there should be in fact a differential as all parties admit, that the State objects to. This, however, is an administrative question, and the action of the tribunal charged with the duty of making these administrative decisions, not being arbitrary or in excess of statutory authority, will not be disturbed by the courts.

The method pursued by the Commission here is similar, in our opinion, to that followed by it, and approved by this Court, in *O'Keefe* v. *United States*, 240 U. S. 294, where the Court said at pages 302–3:

> It was testified that there was no evidence before the Commission to sustain its finding to the effect that any allowance or division in excess of the limits prescribed would result

in undue preference and unjust discrimination. This, of course, is to be tested by a consideration of the evidence that was before the Commission. The record and supplemental report of April 23 and May 14, and the orders of May 14 and October 30, 1912, and the oral evidence and main exhibits before the Commission from the beginning of the tap-line investigation to the making of the order last mentioned were offered in evidence. Appellant, however, has printed only a small part of the testimony, being that which especially relates to the Louisiana & Pacific Railway, its organization, ownership, manner and cost of construction, operating revenue and expenses, accumulated surplus, etc. But, besides these details as to this line, the Commission had before it, as its reports show, a mass of evidence relating to numerous other tap lines, operated under somewhat similar circumstances, including evidence as to the allowances actually made to them out of the joint rate. Evidence of what was allowed on these tap lines had a tendency to show what was reasonable and therefore permissible upon other tap lines, including the Louisiana & Pacific. It is said there was no evidence to enable the Commission to fix a just compensation to that line for a haul of a given number of miles as compared with the just compensation for a haul of a greater or lesser number of miles; no evidence as to terminal expenses, or cost of road haul, or the relation between these factors, or as to other elements which should be

taken into account in fixing a division according to the length of haul. But the evidence showed that some limitation was called for, and, in general at least, furnished the materials upon which to base it. A tribunal such as the Interstate Commerce Commission, expert in matters of rate regulation, may be presumed to be able to draw inferences that are not obvious to others.

In *Terminal R. R. Assn.* v. *United States*, 266 U. S. 17, at page 30, the court said:

> The making of rates is a legislative and not a judicial function. (Citing cases.)

And in the *Assigned Car Cases*, 274 U. S. 564, at page 583, this statement appears:

> • • • The Commission, like other legislators, may reason from the particular to the general.

In *New England Divisions*, 261 U. S. 184, 197, this Court said:

> Obviously, Congress intended that a method should be pursued by which the task, which it imposed upon the Commission, could be performed. The number of carriers which might be affected by an order of the Commission, if the power granted were to be exercised fully, might far exceed six hundred; the number of rates involved many millions. The weak roads were many. The need to be met was urgent. To require specific evidence, and separate adjudication, in respect to each division of each rate of each carrier, would be tantamount to denying the

possibility of granting relief. We must assume that Congress knew this; and that it knew also that the Commission had been confronted with similar situations in the past and how it had dealt with them.

For many years before the enactment of Transportation Act, 1920, it had been necessary, from time to time, to adjudicate comprehensively upon substantially all rates in a large territory. When such rate changes were applied for, the Commission made them by a single order; and, in large part, on evidence deemed typical of the whole rate structure.

CONCLUSION

We submit that the method of action pursued by the Commission in this case has impliedly met with this Court's approval in the *Wisconsin Case*, 257 U. S. 563, 591.

Between the date of the Interstate Commerce Commission's report of July 19, 1926, and its order of October 3, 1927, the Alabama Commission had over 14 months in which to remove the unjust discrimination and undue prejudice against interstate commerce found to exist before there was a "rigid federal order" issued. Given ample opportunity to act in line with the Commission's finding, and not having done so, it became then the duty of the Commission to remove the unjust discrimination against interstate commerce found by it to exist, which it did by the promulgation of its order of October 3, 1927.

The decision of the lower court denying the application for an interlocutory injunction should be affirmed.

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APPENDIX

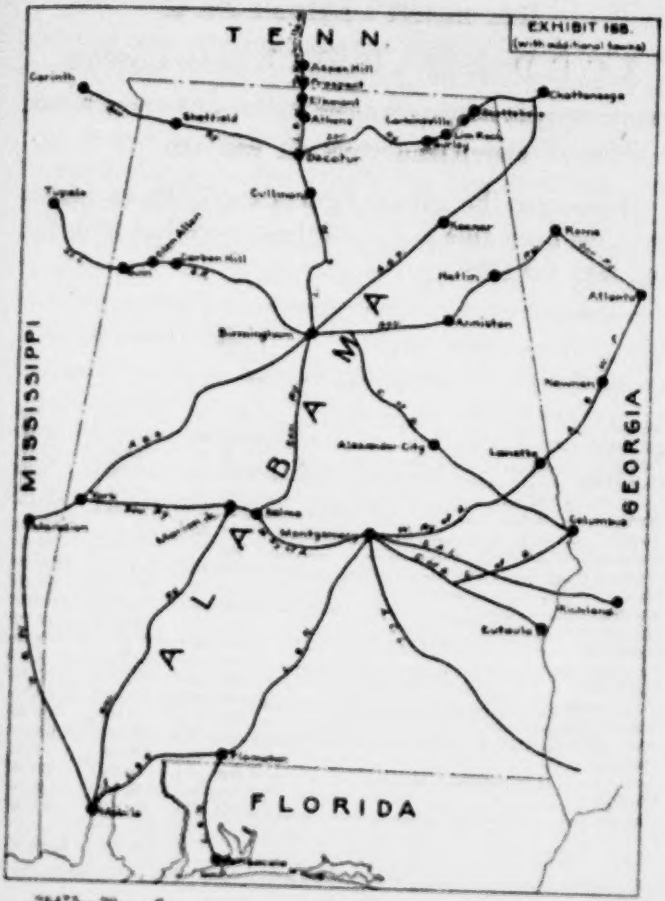
EXHIBIT 168.
(with additional towns)
TENN.
MISSISSIPPI
GEORGIA
FLORIDA
ALABAMA
Corinth
Sheffield
Decatur
Cullman
Tupelo
Carbon Hill
Birmingham
Chattanooga
Rome
Atlanta
Newnan
Lanette
Columbus
Richland
Eufaula
Montgomery
Selma
Alexander City
Anniston
Heflin
Kenner
Lawrenceville
Lim Rock
Burley
Athens
Elkmont
Prospect
Aspen Hill
Mobile
Flomaton

Respondent's Exhibit No. 35

I. C. C. Docket No. 16295. Witness Gardner

[Extract from the American Fertilizer Magazine of February 7, 1925]

FERTILIZER TONNAGE FOR 1924

Below are the official figures for 1924, as far as we have been able to obtain them, together with the tonnage for 1923:

State	Fiscal year ending—	1923	1924
		Tons	Tons
Alabama	Sept. 30	436,786	472,240
Arkansas	Sept. 30	74,774	81,000
California	June 30	71,364	81,001
Connecticut	June 30	75,000	78,650
Delaware	July 1	40,000	37,150
Florida	Dec. 31	391,584	365,317
Georgia	Dec. 31	673,860	678,958
Kentucky	Dec. 31	90,000	93,000
Louisiana	Aug. 31	108,711	129,268
Maine	Dec. 31	100,000	102,000
Maryland	Dec. 31	154,843	150,000
Massachusetts	July 1	65,709	61,968
Mississippi	Sept. 30	214,854	216,000
New Hampshire	Oct. 31	16,000	16,000
New Jersey	Oct. 31	157,496	152,417
North Carolina	June 30	1,091,811	1,189,314
Pennsylvania	Dec. 31	370,550	320,000
South Carolina	June 30	678,595	681,300
Tennessee	June 30	113,729	105,417
Texas	Sept. 1	73,000	120,100
Vermont	June 30	18,000	18,000
Virginia	Dec. 31	430,697	441,855
		5,505,843	4,902,241

As shown, there is an increase in the States reporting of over 458,000 tons, or about 8½ per cent. If the ratio of increase of the other States corresponds with those so far reporting, the total tonnage for 1924 will be over 7,000,000 tons.

Any comparison between last year's tonnage and that of any previous year is misleading on account of the higher-grade goods sold in every part of the country in 1924. The campaign for higher analyses is now bearing fruit, and if it were possible to report the plant-food units for the two years, the increase in 1924 over the previous year would be at least 25 per cent instead of one-third of that amount.

Some of the State reports do analyze the sales as to plant-food content, but the 1924 reports will not be issued for several months. Some of the 1923 reports showed notable progress in this line, although that was the first year of the movement for the higher-grade goods. In Indiana, for example, 195,702 tons of fertilizer were sold in 1923, while in 1920 the sales were 230,184 tons. But the 1923 fertilizer contained 2,238 tons more plant food than that sold in the former year. Similar facts were revealed in other reports.

The 1924 figures indicate plainly that the fertilizer industry is on the upgrade. The latest advices from the South warrant a prediction that an even larger increase will be recorded for 1925.

Respondent's Exhibit No. 157

General investigation of rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket No. 16295.

Statement of the rates on fertilizer, carload, prescribed by the Alabama Public Service Commission in Docket No. 4136 of May 20, 1924, for application in connection with following lines: A. G. S. R. R., A. B. & A. Ry., A. C. L. R. R., B. S. R. R., C. of Ga., Ry., L. & N. R. R., M. & O. R. R., N. C. & St. L. Ry., N. A. Ry, St. L. S. F. Ry., S. A. L. Ry., Sou. Ry., W. Ry. of Ala.

Distance	Single line	Joint line
5 miles and under	85	
10 miles and over 5	90	120
15 miles and over 10	100	130
20 miles and over 15	110	140
25 miles and over 20	120	150
30 miles and over 25	125	155
35 miles and over 30	130	160
40 miles and over 35	135	165
45 miles and over 40	140	170
50 miles and over 45	145	175
55 miles and over 50	150	180
60 miles and over 55	155	185
65 miles and over 60	160	190
70 miles and over 65	165	195
75 miles and over 70	170	200
80 miles and over 75	175	205
85 miles and over 80	180	210
90 miles and over 85	185	215
95 miles and over 90	190	220
100 miles and over 95	195	225
110 miles and over 100	200	230
120 miles and over 110	210	240
130 miles and over 120	220	250
140 miles and over 130	230	260
150 miles and over 140	240	270
160 miles and over 150	250	280
170 miles and over 160	260	290
180 miles and over 170	270	300
190 miles and over 180	280	310
200 miles and over 190	290	320
210 miles and over 200	300	330
220 miles and over 210	310	340
230 miles and over 220	320	350
240 miles and over 230	330	360
250 miles and over 240	340	370
260 miles and over 250	350	380
270 miles and over 260	360	390
280 miles and over 270	370	400
290 miles and over 280	380	410
300 miles and over 290	390	420

Statement of the rates on fertilizer, carload, prescribed by the Alabama Public Service Commission in Docket No. 4136 of May 26, 1924, etc.—Continued

Distance	Single line	Joint line
360 miles and over 340	405	415
380 miles and over 360	415	425
400 miles and over 380	425	435
420 miles and over 400	435	445
440 miles and over 420	445	455
460 miles and over 440	455	465
480 miles and over 460	465	475
500 miles and over 480	475	485
520 miles and over 500	485	495

L. & N. R. R. Traffic Department,
L. & N. R. R. Traffic Department, *March 27, 1925.* T. E. H.

Respondent's Exhibit No. 158

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket No. 16295.

Statement of the rates on fertilizer, carload, (a) on basis of Alabama scale in effect prior to July 25, 1924 (effective date of order of Alabama Public Service Commission in Docket 4136 (b) on basis of Alabama lines proposed scale submitted in A. P. S. C. Docket 4136 (c) on basis of third Royster Scale (50 I. C. C. 34) (d) on basis of Alabama prescribed scale in A. P. S. C. Docket No. 4136

(Single-line scale)

Miles	Alabama scale in effect prior to July 25, 1924	Alabama lines proposed scale A. P. S. C. Docket 4136	Third Royster scale	Alabama prescribed scale (present scale A. P. S. C. Docket 4136
5	90	90	90	90
10	102	105	102	90
15	115	120	124	110
20	115	135	135	110
25	126	144	147	120
30	126	153	158	120
35	135	162	158	120
40	135	171	169	135

***Statement of the rates on fertilizer, carload, (a) on basis of Alabama scale in effect prior to July 25, 1924, etc.*—Continued**

Miles	Alabama scale in effect prior to July 25, 1924	Alabama lines proposed scale A. P. S. C. Docket 4136	Third Royster scale	Alabama prescribed scale (present scale) A. P. S. C. Docket 4136
45	147	180	180	140
50	150	180	180	145
55	156	198	192	150
60	160	207	203	155
65	165	216	203	160
70	160	216	214	165
75	180	225	214	170
80	192	225	225	175
85	200	234	237	180
90	205	234	237	185
95	214	243	248	190
100	214	243	250	195
110	225	252	250	205
120	237	261	270	215
130	250	270	270	225
140	270	270	282	235
150	282	288	293	245
160	282	297	311	255
170	297	306	315	265
180	306	315	327	275
190	309	324	327	285
200	315	333	338	295
210	315	342	348	305
220	327	351	360	315
230	339	360	360	325
240	339	360	372	335
250	349	370	372	345
260	349	387	383	355
270	360	405	393	365
280	360	405	394	365
290	372	414	405	375
300	383	414	405	375
310	394	428	428	395
320	405	428	428	395
330	417	441	428	394
340	428	441	428	395
350	428	452	450	405
360	428	452	450	405
370	428	466	462	415
380	462	466	462	415
390	462	462	484	425
400	462	462	484	425
410	473	463	484	425
420	473	485	495	435
430	473	508	507	445
440	484	508	507	445

RESPONDENT'S EXHIBIT No. 164

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing local scale rates on fertilizer of southeastern lines shown compared with the single-line Alabama and third Royster scales (50 I. C. C. 24)

Miles	A. C. L. R. R.		A. B. & A. Ry., note 3	A. G. S. R. R., note 4	C. of Ga. Ry.			C. N. O. & T. P. Ry., note 5	S. A. L. Ry., note 9	L. & N. R. R., note 10	Southern Ry., note 11	A. & W. P. Ry., Ga. R. R., note 12	Prescribed by A. P. S. C. in Docket 4196	Third Royster scale
	Note 1	Note 2			Note 5	Note 6	Note 7							
5	102	147	102	102	102	66	157	90	113	90	66	66	80	90
10	113	147	124	102	113	102	157	90	113	90	102	102	90	102
15	124	147	135	113	124	113	180	102	147	113	113	113	100	124
20	147	147	147	147	147	113	180	102	147	147	113	113	110	135
25	158	180	158	158	158	124	214	113	169	147	124	124	120	147
30	169	180	169	158	169	124	214	113	169	169	124	124	125	158
35	180	180	180	158	180	135	225	147	180	169	135	135	130	158
40	192	203	192	169	192	135	225	147	180	169	135	135	135	169
45	203	214	203	180	203	147	237	169	203	203	147	135	140	180
50	203	214	203	180	203	158	237	169	203	203	158	158	145	180
55	214	225	214	192	214	158	259	203	214	203	158	158	150	192
60	214	225	214	203	214	169	259	203	214	203	169	158	155	203
65	225	225	225	203	214	169	259	225	225	203	169	169	160	203
70	225	237	237	214	225	180	259	225	225	225	180	180	165	214
75	237	237	237	214	237	180	282	225	237	225	180	180	170	214
80	237	237	248	225	237	192	282	225	237	225	192	192	175	225
85	237	237	259	237	237	203	282	259	259	225	203	203	180	237
90	248	248	259	237	248	203	282	259	259	259	203	203	185	237
95	248	248	270	248	248	214	293	259	259	259	214	214	190	248
100	259	259	270	259	259	214	293	259	259	259	214	214	195	259
110	259	259	282	270	259	225	304	259	270	259	225	225	205	259
120	270	270	293	282	270	237	315	259	270	259	237	237	215	270
130	282	282	293	293	270	259	315	259	293	259	259	259	225	270
140	282	282	304	304	282	270	327	259	293	259	270	270	235	282
150	282	282	315	315	282	282	338	259	304	259	282	282	245	293
160	293	293	315	315	293	282	349	259	315	259	282	282	255	315
170	315	315	327	315	315	293	360	259	315	259	293	293	265	315
175	327	327	327	327	315	304	372	270	327	259	304	304	275	327
180	327	327	327	327	315	304	372	270	327	259	304	304	275	327
190	327	327	338	338	327	304	372	270	327	282	304	304	285	327
200			349	349	327	315	383	282		282	315	315	295	338
205			349	349	338	315	383	293		315	315	315	305	349
210			349	349	338	315	383	293		315	315	315	305	349

Statement showing local scale rates on fertilizer of southeastern lines shown compared with the single-line Alabama and third Royster scales (59 I. C. C. 34)—Continued

Miles	A. C. L. R. R.		A. B. & A. Ry., note 3	A. G. S. R. R., note 4	C. of Ga. Ry.			C. N. O. & T. P. Ry., note 6	S. A. L. Ry., note 9	L. & N. R. R., note 10	Southern Ry., note 11	A. & W. P. Ry., Ga. R. R., note 12	Prescribed by A. P. S. C. in Docket 4126	Third Royster scale
	Note 1	Note 2			Note 5	Note 6	Note 7							
220			360	349	349	327	354	293		315	327		315	349
225			372	349	349	326	405	293		327	328		326	360
230			372	349	349	326	405	293		328	328		325	360
235			372	349	360	326	417	304		328	328		335	372
240			372	349	360	326	417	304		328	328		335	372
245			363	349	372	349	428	304		328	349		345	372
250			363	349	372	349	428	315		328	349		345	372
260			363	349	372	349	439	315		349	349		355	363
270			394	349	363	360	439	315		349	360		365	363
275			394	349	363	360	439	315		349	360		365	394
280			394	349	363	360	450	327		349	360		365	394
290			405	349	394	372	450	327		349	372		375	405
300			417	349	405	363	450	327		349	363		375	405
305			428		417	394	464	327		372	394		385	428
310			428		417	394	464	338		372	394		385	428
320			428		428	405	464	338		372	405		385	428
325			439		428	417	464	349		372	417		395	439
330			439		439	417	464	349		383	417		395	439
340			439		439	428	464	349		383	428		395	439
350			450		439	439	495			383	439		405	439
360			462		450	439	507			394	439		405	439
370			462		462	439	507			394	439		415	462
380			473		473	462	507			394	462		415	462
390			484		473	462	540			394	462		425	484
400			484		484	462	540			394	462		425	484
410			495			473	553			405	473		435	495
420			495			473	553			405	473		435	495
430			507			473	553			405	473		445	507
440			516			484	553			405	484		445	507
450			516			484	567			405			455	516
460			520			484	567			428			455	516
470						484	619			428			465	520
480						484	619			428			465	520
490													475	532
500													475	532
510													485	532
520													485	532

NOTE 1.—Applicable on traffic between A. C. L. R. R. stations in Alabama.

NOTE 2.—Applicable between A. C. L. R. R. stations in Alabama and A. C. L. R. R. stations in Georgia (Bainbridge, Ga., and West).

NOTE 3.—Applicable from stations in Alabama to stations in Georgia, from stations in Georgia to stations in Alabama.

NOTE 4.—Applicable only on interstate traffic between points on the A. G. S. R. R.

NOTE 5.—Applicable locally between Birmingham, Childersburg, Sylacauga, Opelika, Montgomery, Union Springs, Eufaula, Columbia, Dothan, Sampson, Lockhard, Paxton, and Florida, Ala., and Columbus, Ga., and stations in Alabama.

NOTE 6.—Applicable between all stations in Georgia between stations in Georgia and Columbia and Eufaula, Ala., and between Columbia, Ala., and Eufaula, Ala.

NOTE 7.—Applicable between Columbus, Ga., Eufaula, Ala., and Columbia, Ala., and Central of Georgia stations in Alabama, Florida, Georgia, and Tennessee.

NOTE 8.—Applicable between all stations on the C. N. O. & T. P. Ry.

NOTE 9.—Applicable between S. A. L. Ry. stations, on Atlanta, Birmingham and Savannah division in Alabama, Georgia, North and South Carolina.

NOTE 10.—Applicable between points south of Ohio River (except Virginia intrastate and P. & A. division traffic).

NOTE 11.—Applicable on interstate traffic between points in Georgia.

NOTE 12.—Applicable on interstate traffic between points on A. & W. P. R. R. and between points on the Georgia R. R.

Tariff authorities.—A. C. L. R. R. Alabama Local No. 2, I. C. C. B-2096; A. C. L. R. R. Alabama-Georgia Interstate No. 9, I. C. C. B-2097; A. B. & A. Ry. Tariff No. 57-C, I. C. C. 377; A. G. S. R. R. Local No. 1211-D, I. C. C. 1580; Central of Georgia Mileage No. 3, I. C. C. 2417; Central of Georgia Interstate Mileage No. 3, I. C. C. 2413; Central of Georgia Georgia Mileage No. 3, I. C. C. 2428; C. N. O. & T. P. Ry. Local 1209-D, I. C. C. 4560; S. A. L. Ry. Interstate Local No. 3, I. C. C. A-6916; Southern Ry. Georgia Local No. 1, I. C. C. A-9879; A. & W. P. R. R. Tariff 1565-C, I. C. C. A-44.

L. & N. R. R. TRAFFIC DEPARTMENT, *April 30, 1925.* C. T. M.

Respondent's Exhibit No. 170

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket No. 16295.

Statement of the rates on fertilizer, carload, and on basis of third Royster scale (50 I. C. C. 34) from Decatur, Ala., to Southern Ry. agency stations Gurley, Ala., to Stevenson, Ala., inclusive, compared with the rates from Chattanooga to the same stations

From Decatur, Ala., to—	Miles	Present rate	Third Royster scale	From Chattanooga, Tenn., to—	Miles	Present rate	Third Royster scale
Southern Ry. stations				*Southern Ry. stations*			
Gurley, Ala.	41	140	180	Stevenson, Ala.	30	180	169
Jacobs Spur, Ala.	43	140	180	Cedar Grove, Ala.	42	180	180
Paint Rock, Ala.	45	140	180	Fackler, Ala.	45	180	180
Paint Rock Bridge	48	145	180	Hollywood, Ala.	51	210	193
Woodville, Ala.	50	145	180	Scottsboro, Ala.	56	210	203
Stevens Gap, Ala.	54	180	192	Larkinsville, Ala.	62	210	203
Lim Rock, Ala.	56	155	203	Lim Rock, Ala.	66	210	214
Larkinsville, Ala.	60	155	203	Stevens Gap, Ala.	68	220	214
Scottsboro, Ala.	66	165	214	Woodville, Ala.	72	220	214
Hollywood, Ala.	71	170	214	Paint Rock Bridge	74	220	214
Fackler, Ala.	77	175	.....	Paint Rock, Ala.	77	220	225
Cedar Grove, Ala.	80	175	225	Jacobs Spur, Ala.	79	220	225
Stevenson, Ala.	83	180	237	Gurley, Ala.	81	230	237

Tariff authorities.—Agent Glenn's I. C. C. A-478, Southern Ry. I. C. C. A-9406.

L. & N. R. R. Traffic Department, *April 10, 1931.* W. E. H.

RESPONDENT'S EXHIBIT No. 173

General investigation of rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing the present rates on fertilizer, carload, also on basis of Third Royster Scale (50 I. C. C. 34) from Birmingham, Ala., to Atlanta, Ga., and intermediate agency stations on the Southern Ry., compared with similar rates from Atlanta, Ga., to Birmingham, Ala., and intermediate agency stations on the Southern Ry.

From Birmingham, Ala., to—	Miles	Present rate	Third Royster scale	From Atlanta, Ga., to—	Miles	Present rate	Third Royster scale
Southern Ry. stations				*Southern Ry. stations*			
Avondale, Ala	2	80	90	Chattahoochee, Ga	8	102	102
Woodlawn, Ala	3	80	90	Mableton, Ga	15	113	124
Irondale, Ala	6	90	102	Austell, Ga	18	113	125
Leeds, Ala	18	110	135	Lithia Springs, Ga	21	113	147
Brompton, Ala	23	120	147	Douglasville, Ga	27	124	158
Eden, Ala	33	130	158	Winston, Ga	32	124	158
Pell City, Ala	35	130	158	Villa Rica, Ga	36	135	169
Riverside, Ala	40	135	169	Temple, Ga	44	147	180
Lincoln, Ala	45	140	180	Bremen, Ga	53	158	192
Eastaboga, Ala	51	150	192	Waco, Ga	56	158	203
Bynum, Ala	55	150	192	Tallapoosa, Ga	63	180	203
Anniston, Ala	62	160	203	Muscadine, Ala	70	225	214
De Armanville, Ala	71	170	214	Fruit Hurst, Ala	73	237	214
Choccoloco, Ala	74	170	214	Edwardsville, Ala	78	237	225
Iron City, Ala	77	175	225	Heflin, Ala	85	239	237
Heflin, Ala	82	180	237	Iron City, Ala	90	239	237
Edwardsville, Ala	86	185	237	Choccoloco, Ala	93	239	248
Fruit Hurst, Ala	94	190	248	De Armanville, Ala	96	239	250
Musoadine, Ala	97	195	250	Anniston, Ala	104	263	250
Tallapoosa, Ga	104	202	259	Bynum, Ala	112	270	270
Waco, Ga	111	215	270	Eastaboga, Ala	116	282	270
Bremen, Ga	114	215	270	Lincoln	123	282	270
Temple, Ga	123	215	270	Riverside, Ala	127	282	270
Villa Rica, Ga	139	264	270	Pell City, Ala	132	286	282
Winston, Ga	135	264	282	Eden, Ala	134	286	282
Douglasville, Ga	140	268	282	Brompton, Ala	144	286	293
Lithia Springs, Ga	146	268	293	Leeds, Ala	149	286	293
Austell, Ga	149	268	293	Irondale, Ala	161	214	315
Mableton, Ga	152	282	315	Woodlawn, Ala	164	214	315
Chattahoochee, Ga	159	214	315	Avondale, Ala	165	214	315
Atlanta, Ga	167	214	315	Birmingham, Ala	167	214	315

Tariff authorities.—Southern Ry. I. C. C. Nos. A-9461 and A-9503; Agent J. H. Glenn's I. C. C. No. A-478.

L. & N. TRAFFIC DEPARTMENT, *April 8, 1926.* W. R. H.

Respondent's Exhibit No. 174

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Royster scale (50 I. C. C. 34) from Montgomery, Ala., to Richland, Ga., and intermediate agency stations on the Seaboard Air Line Ry., compared with similar rates from Richland, Ga., to Montgomery, Ala., and intermediate agency stations on the Seaboard Air Line Ry.

From Montgomery, Ala., to—	Miles	Present rate	Third Royster scale	From Richland, Ga., to—	Miles	Present rate	Third Royster scale
S. A. L. Ry. stations				*S. A. L. Ry. stations*			
Cecil, Ala.	20	117	133	Lumpkin, Ga.	9	90	102
Chesson, Ala.	23	130	147	Louvale, Ga.	16	90	135
Hardaway, Ala.	30	125	158	Union, Ga.	20	90	135
Fort Davis, Ala.	39	135	169	Omaha, Ga.	27	110	158
Reba, Ala.	43	140	169	Cottonton, Ala.	31	214	158
Hannon, Ala.	49	145	169	Pittsview, Ala.	37	225	169
Hurtsboro, Ala.	50	155	200	Rutherford, Ala.	47	227	169
Rutherford, Ala.	62	160	200	Hurtsboro, Ala.	54	240	192
Pittsview, Ala.	73	170	214	Hannon, Ala.	60	250	200
Cottonton, Ala.	79	175	220	Reba, Ala.	65	250	200
Omaha, Ga.	83	270	237	Fort Davis, Ala.	71	270	214
Union, Ga.	89	280	237	Hardaway, Ala.	80	282	225
Louvale, Ga.	94	280	240	Chesson, Ala.	85	300	237
Lumpkin, Ga.	102	304	240	Cecil, Ala.	90	300	237
Richland, Ga.	110	315	250	Montgomery, Ala.	110	315	250

Tariff authorities—S. A. L. Ry. I. C. C. Nos. A-[illegible], A-[illegible], A-[illegible], and A-[illegible].

L. & N. R. R. Traffic Department, *Mar* [illegible], [illegible]. W. D. B.

RESPONDENT'S EXHIBIT No. 175

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Royster scale (50 I. C. C. 34) from Montgomery, Ala., to Columbus, Ga., and intermediate stations on the Central of Georgia Ry., compared with similar rates from Columbus, Ga., to Montgomery, Ala., and intermediate stations on the Central of Georgia Ry.

From Montgomery, Ala., to—	Miles	Present rate	Third Royster scale	From Columbus, Ga., to—	Miles	Present rate	Third Royster scale
C. of Ga. Ry. stations				*C. of Ga. Ry. stations*			
Keyton, Ala	4	80	90	Girard, Ala	2	102	90
Dingley, Ala	5	80	90	Fontaine, Ala	3	[1]75.2	90
Baruchias, Ala	10	90	102	Kaolin, Ala	4	102	90
Parrys Mill, Ala	12	100	126	Dixieland, Ala	5	102	90
Pike Road, Ala	13	100	126	Brick Yard, Ala	6	113	102
Landon, Ala	18	110	135	Flournoys, Ala	8	113	102
Mathews, Ala	21	120	147	Tickhaw, Ala	9	113	102
Mitchell, Ala	25	120	147	Fort Mitchell, Ala	10	113	102
Fitzpatrick, Ala	26	125	138	Nuckols, Ala	13	124	126
Thompson, Ala	33	130	138	Lato, Ala	15	124	124
Union Springs, Ala	40	132	169	Seale, Ala	20	147	135
Chunnennggee, Ala	45	140	180	Dudleys, Ala	22	158	147
Peachburg, Ala	47	145	180	Colbert, Ala	24	169	147
Suspension, Ala	49	145	180	Hatchechubbee, Ala	27	169	156
Garryton, Ala	55	150	192	Wendo, Ala	30	169	156
Tuno, Ala	57	155	203	Hurtsboro, Ala	33	180	156
Hurtsboro, Ala	60	155	203	Tuno, Ala	36	192	169
Wendo, Ala	65	169	203	Garreyton, Ala	40	203	169
Hatchechubbee, Ala	69	165	214	Suspension, Ala	46	203	180
Colbert, Ala	71	170	214	Peachburg, Ala	49	214	180
Dudleys, Ala	73	170	214	Chunnennggee, Ala	50	214	180
Seale, Ala	75	170	214	Union Springs, Ala	55	214	192
Lato, Ala	90	175	225	Thompson, Ala	62	214	203
Nuckols, Ala	92	180	237	Fitzpatrick, Ala	67	225	214
Fort Mitchell, Ala	95	190	237	Mitchell, Ala	70	225	214
Tickhaw, Ala	98	185	237	Mathews, Ala	75	237	214
Flournoys, Ala	86	185	237	London, Ala	77	237	225
Brick Yard, Ala	89	185	237	Pike Road, Ala	80	237	225
Dixieland, Ala	90	185	237	Parry's Mill, Ala	84	237	237
Kaolin, Ala	91	190	249	Baruchias, Ala	86	249	237
Fontaine, Ala	92	190	249	Dingley, Ala	95	249	249
Girard, Ala	93	190	249	Keyton, Ala	92	214	249
Columbus, Ga	95	214	249	Montgomery, Ala	95	214	249

[1] Rate published as $7.53 per car of 80,000 pounds excess at proportionate rate and for the purpose of this statement reduced to per ton basis.

Tariff authorities—C. of Ga. Ry. I. C. C. No. 2490. Agent J. H. Glenn's I. C. C. No. A-478.

L. & N. R. R. TRAFFIC DEPARTMENT, *March 30, 1926.* T. E. H. W. E. G. W. D. B.

Respondent's Exhibit No. 176

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Royster scale (50 I. C. C. 34) from Decatur, Ala., to Corinth, Miss., and intermediate stations on the Southern Ry. compared with similar rates from Corinth, Miss., to Decatur, Ala., and intermediate stations on the Southern Ry.

From Decatur, Ala., to—	Miles	Present rate	Third Royster scale	From Corinth, Miss., to—	Miles	Present rate	Third Royster scale
Southern Ry. stations				*Southern Ry. stations*			
Trinity, Ala.	6	90	102	Glens, Miss.	9	102	102
Hillsboro, Ala.	13	100	124	Coke, Miss.	11	102	124
Wheeler, Ala.	16	110	135	Burnsville, Miss.	14	102	134
Courtland, Ala.	20	110	135	Walker, Miss.	16	102	135
Town Creek, Ala.	25	120	147	Hazard, Miss.	19	102	135
Leighton, Ala.	33	130	156	Iuka, Miss.	22	102	147
Sheffield, Ala.	45	140	180	Gravel Siding, Miss.	25	102	147
Pride, Ala.	53	150	192	Oldham, Miss.	28	102	156
Boston, Ala.	56	155	205	Morrison, Miss.	27	102	156
Cherokee, Ala.	62	160	208	Riverton Junction, Ala.	30	102	156
Chisen, Ala.	64	160	208	Margerum, Ala.	30	102	156
Margerum, Ala.	66	165	214	Chisen, Ala.	34	102	156
Riverton Junction, Ala.	69	165	214	Cherokee, Ala.	36	102	169
Morrison, Miss.	71	220	214	Boston, Ala.	40	102	169
Oldham, Miss.	72	220	214	Pride, Ala.	45	102	180
Gravel Siding, Miss.	73	220	214	Sheffield, Ala.	55	210	192
Iuka, Miss.	76	220	225	Leighton, Ala.	65	210	205
Hazard, Miss.	80	220	225	Town Creek, Ala.	73	220	214
Walker, Miss.	82	220	227	Courtland, Ala.	78	220	225
Burnsville, Miss.	84	220	227	Wheeler, Ala.	82	220	227
Coke, Miss.	87	220	227	Hillsboro, Ala.	85	220	227
Glens, Miss.	90	220	227	Trinity, Ala.	92	220	240
Corinth, Miss.	96	220	219	Decatur, Ala.	96	220	219

Tariff authorities.—Southern Ry. I. C. C. Nos. A-[illegible] and A-[illegible]. Agent J. H. Glenn's I. C. C. No. A-[illegible].

L. & N. R. R. Traffic Department, *March* [illegible], [illegible]. *W. E. G.* *W. D. B.*

RESPONDENT'S EXHIBIT No. 177

General investigation rates on fertilizer and fertilizer material between southern points. I. C. C. Docket No. 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Royster scale (50 I. C. C. 34) from Birmingham, Ala., to Tupelo, Miss., and intermediate agency stations on the St. Louis-San Francisco Ry., compared with similar rates from Tupelo, Miss., to Birmingham, Ala., and intermediate agency stations on the St. Louis-San Francisco Ry.

From Birmingham, Ala., to St. L.-S. F. Ry. stations	Miles	Rate	Third Royster scale	From Tupelo, Miss., to St. L.-S. F. Ry. stations	Miles	Rate	Third Royster scale
Adamsville, Ala	13	100	124	Plantersville, Miss	4	90	90
Palos, Ala	20	110	135	Nettleton, Miss	12	100	124
Quinton, Ala	22	120	147	Amory, Miss	23	100	147
Dora, Ala	27	125	156	Quincy, Miss	32	100	156
Samaset, Ala	29	125	156	Greenwood Springs, Miss	37	100	169
Cordova, Ala	33	130	156	Guitman, Miss	41	100	180
Jasper, Ala	41	140	180	Sulligent, Ala	47	210	180
Hillard, Ala	48	145	180	Crews, Ala	50	210	180
Townley, Ala	52	150	192	Beaverton, Ala	54	210	192
Carbon Hill, Ala	60	155	203	Guin, Ala	60	210	203
Eldridge, Ala	66	160	214	Winfield, Ala	67	220	214
Glen Allen, Ala	75	170	214	Glen Allen, Ala	72	220	214
Winfield, Ala	79	175	225	Eldridge, Ala	81	300	237
Guin, Ala	86	183	237	Carbon Hill, Ala	87	300	237
Beaverton, Ala	93	190	248	Townley, Ala	95	300	248
Crews, Ala	97	195	259	Hillard, Ala	99	300	259
Sulligent, Ala	100	195	259	Jasper, Ala	108	300	259
Guitman, Miss	106	200	259	Cordova, Ala	113	300	270
Greenwood Springs, Miss	110	200	259	Samaset, Ala	118	300	270
Quincy, Miss	114	200	270	Dora, Ala	119	300	270
Amory, Miss	124	220	270	Quinton, Ala	124	320	270
Nettleton, Miss	135	220	282	Palos, Ala	127	320	270
Plantersville, Miss	143	220	282	Adamsville, Ala	134	320	282
Tupelo, Miss	147	225	293	Birmingham, Ala	147	225	293

Tariff authorities.—St. L.-S. F. Ry. I. C. C. Nos. 8305 and 8410; St. L.-S. F. Ry. Tariff No. 85-I (Interstate); Agent J. H. Glenn's I. C. C. No. A-478.

L. & N. R. R. Co. TRAFFIC DEPARTMENT, *March 18, 1931.* W. D. B.

Respondent's Exhibit No. 178

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket 16295.

Statement of the rates on fertilizer, carload, from Mobile, Ala., v. Pensacola, Fla., to L. & N. R. R. stations Flomaton to Montgomery, Ala., inclusive (a) in effect prior to July 25, 1924 (effective date of Alabama Public Service Commission order in Docket 4136) (b) present rates and (c) on basis of Third Royster scale (50 I. C. C. 34)

From ——	Distance		Rate prior to July 25, 1924		Present rates		Third Royster scale	
To—	Mobile	Pensacola	Mobile	Pensacola	Mobile	Pensacola	Mobile	Pensacola
L. & N. R. R. stations:								
Flomaton, Ala.	39	43	160	160	125	160	200	160
Pollard, Ala.	65	49	160	160	150	160	200	160
Herrington, Ala.	68	52	160	160	165	160	214	192
Keego, Ala.	68	52	160	160	165	160	214	192
Brewton, Ala.	73	57	160	160	170	160	214	205
Kirkland, Ala.	80	64	192	192	175	192	225	205
Castleberry, Ala.	87	71	203	203	185	203	237	214
Sparta, Ala.	93	77	214	214	190	214	248	225
Evergreen, Ala.	96	82	214	214	195	214	250	227
Owassa, Ala.	102	86	225	225	205	225	250	227
Wilcox, Ala.	106	90	225	225	205	225	250	227
Garland, Ala.	112	96	237	237	215	237	270	239
Dunham, Ala.	116	100	237	237	215	237	270	239
Georgiana, Ala.	119	103	237	237	215	237	270	239
Chapman, Ala.	122	106	239	239	225	239	270	239
Bolling, Ala.	126	110	239	239	225	239	270	239
Wald, Ala.	129	113	239	239	225	239	270	270
Greenville, Ala.	134	118	270	239	225	239	262	270
Searcy, Ala.	141	125	262	239	245	239	268	270
Fort Deposit, Ala.	148	130	262	239	245	239	268	270
Calhoun, Ala.	151	135	262	239	255	239	313	262
Letohatchee, Ala.	159	142	262	239	255	239	313	268
Tyson, Ala.	163	147	265	239	265	239	313	268
Chesterfield, Ala.	164	148	265	239	265	239	313	268
McGehee, Ala.	169	153	265	239	265	239	313	313
Pankness, Ala.	173	157	304	239	275	239	327	313
Montgomery, Ala.	178	162	304	239	275	239	327	313

Tariff authorities.—L. & N. R. R. G. F. O. 10-B (intrastate); L. & N. R. R. I. C. C. A-13210; Agent Glenn's I. C. C. A-478 (intrastate); Agent F. L. Spaulden's I. C. C. 706.

L. & N. R. R. Traffic Department, April 7, 1925. T. E. H.

RESPONDENT'S EXHIBIT No. 180

General investigation rates on fertilizer and fertilizer materials between southern points. I. C. C. Docket No. 16295.

Statement showing the present rates on fertilizer, carload, also on basis of third Royster scale (50 I. C. C. 34) from Eufaula, Ala., compared with similar rates from Columbus, Ga., to Montgomery, Ala., and intermediate stations on the Central of Georgia Ry.

From Eufaula, Ala., to Central of Georgia Ry. stations	Miles	Present rate	Third Royster scale	From Columbus, Ga., to Central of Georgia Ry. stations	Miles	Present rate	Third Royster scale
Lugo, Ala	7	90	102	Girard, Ala	2	102	90
Batesville, Ala	14	100	124	Fontaine, Ala	3	[1] 75.2	90
Comer, Ala	18	110	135	Kaolin, Ala	4	102	90
Midway, Ala	27	125	156	Dixieland, Ala	5	112	90
Three Notch, Ala	31	130	156	Brickyard, Ala	6	113	102
Cedar Plains, Ala	35	130	156	Flournoys, Ala	8	113	102
Union Springs, Ala	39	135	169	Tickfaw, Ala	9	113	102
Thompson, Ala	46	145	180	Fort Mitchell, Ala	10	113	102
Fitzpatrick, Ala	51	150	192	Nuckols, Ala	13	124	124
Mitchell, Ala	55	150	192	Lato, Ala	15	124	124
Mathews, Ala	59	155	203	Seale, Ala	20	147	135
London, Ala	61	160	203	Dudleys, Ala	22	156	147
Pike Road, Ala	65	160	203	Colbert, Ala	26	169	147
Perrys Mill, Ala	68	165	214	Hatchechubbee, Ala	27	169	156
Barachias, Ala	70	165	214	Wendc, Ala	30	169	156
Dingley, Ala	76	175	225	Hurtsboro, Ala	35	180	156
Keyton, Ala	77	175	225	Tenre, Ala	38	192	169
Montgomery, Ala	80	175	225	Guerryton, Ala	40	203	169
				Suspension, Ala	46	203	180
				Peachburg, Ala	49	214	180
				Chunnenuggee, Ala	50	214	180
				Union Springs, Ala	55	214	192
				Thompson, Ala	62	214	203
				Fitzpatrick, Ala	67	225	214
				Mitchell, Ala	70	225	214
				Mathews, Ala	75	237	214
				London, Ala	77	237	225
				Pike Road, Ala	80	237	225
				Perrys Mill, Ala	84	237	237
				Barachias, Ala	86	248	237
				Dingley, Ala	92	248	248
				Keyton, Ala	92	214	248
				Montgomery, Ala	95	214	248

[1] Rate published as $7.52 per car of 20,000 pounds carmen at proportionate rate and for purpose of this statement reduced to per ton basis.

Tariff authorities.—Cent. of Ga. Ry. I. C. C. No. 2499; Agent J. H. Glenn's I. C. C. No. 478.

LOUISVILLE & NASHVILLE R. R. CO., TRAFFIC DEPARTMENT, *March 9, 1931.*
T. E. H. W. E. G. W. D. B.

Exhibit No. 212.

I. C. C. Docket No. 16295. Witness Ketner.

Statement showing present and proposed local mileage (single-line) rates on fertilizer and fertilizer materials between points in Florida, in cents per ton of 2,000 pounds.

Distances, in miles	Present		Proposed	Distances, in miles	Present		Proposed
	Fertilizer, note 1	Fertilizer material, note 2	Fertilizer (carloads), minimum weight, 30,000 pounds		Fertilizer, note 1	Fertilizer material, note 2	Fertilizer (carloads) minimum weight, 30,000 pounds
5	147	110	60	170	313	236	311
10	147	110	102	180	313	236	327
15	159	119	124	190	313	236	327
20	159	119	153	200	313	236	338
25	169	127	147	210	313	236	349
30	169	127	159	220	313	236	349
35	180	135	159	230	313	236	360
40	180	135	169	240	313	236	372
45	205	152	180	250	327	245	372
50	205	152	182	260	327	245	383
55	214	161	192	270	327	245	393
60	214	161	205	280	327	245	394
65	225	169	205	290	327	245	405
70	225	169	214	300	327	245	405
75	237	178	214	320	327	245	428
80	237	178	225	340	338	254	428
85	248	186	237	360	338	254	450
90	248	186	237	380	338	254	462
95	259	194	249	400	349	262	484
100	259	194	259	420	360	270	495
110	270	203	259	440	360	270	507
120	270	203	270	460	372	279	518
130	282	212	270	480	384	288	518
140	293	220	282	500	384	288	540
150	293	220	293	520	384	288	552
160	304	228	313	525	384	288	562

Note 1.—Fertilizer rated class "M" in Florida classification.

Note 2.—Fertilizer materials rated 75 per cent of class "M" Florida classification minimum over 30,000 pounds.

S. A. L. Ry., I. C. C. No. A-7925.

Norfolk, Va., *April 15, 1925.*

CARRIERS' EXHIBIT No. 243

I. C. C. Docket No. 16295. Witness, J. F. Dalton

NORFOLK SOUTHERN RAILROAD COMPANY

Statement showing the present rates on fertilizer, carload, of the Norfolk Southern R. R. for single-line application, in cents per ton 2,000 pounds

Distances	Between points in North Carolina intrastate	Between points in Virginia intrastate	Interstate between points in North Carolina or Virginia, or vice versa	Royster scale
5 miles	90	102	135	[1] 90
10 miles	113	124	135	[1] 102
15 miles	135	124	138	[1] 124
20 miles	147	169	169	[1] 135
25 miles	169	214	180	[1] 147
30 miles	169	214	203	[1] 158
35 miles	180	214	214	158
40 miles	180	214	214	169
45 miles	192	214	214	180
50 miles	203	214	214	180
55 miles	214	214	214	192
60 miles	214	214	225	203
65 miles	225	214	237	203
70 miles	225	214	237	214
75 miles	237	214	248	214
80 miles	237	214	259	225
85 miles	248	214	259	237
90 miles	248	214	270	237
95 miles	259	214	270	248
100 miles	259	214	282	259
110 miles	259	214	293	259
120 miles	270	214	315	270
130 miles	270	214	315	270
140 miles	293	214	327	282
150 miles	293	214	327	293
160 miles	315	214	338	315
170 miles	315	214	349	315
180 miles	327	214	349	327
190 miles	327	214	360	327
200 miles	338	214	372	338
210 miles	349	214	372	349
220 miles	349	214	383	349
230 miles	360	214	383	360
240 miles	372	214	394	372
250 miles	372	214	405	372
260 miles	383	214	417	383
270 miles	383	214	417	383
280 miles	394	214	428	394

[1] Rates 50 miles and under are the proposed rates of other southern carriers.

***Statement showing the present rates on fertilizer, carload, of the Norfolk Southern R. R. for single-line application, in cents per ton 2,000 pounds*—Continued**

Distance	Between points in North Carolina intrastate	Between points in Virginia intrastate	Interstate between points in North Carolina or Virginia, or vice versa	Bayster scale
260 miles	405	214	428	405
265 miles	405	214	428	405
270 miles	426	214	430	426
275 miles	430	214	462	430
280 miles	430	214	473	430
285 miles	462	214	473	462
290 miles	464	214	473	464
295 miles	465	214	473	465
300 miles	507	214	473	507
305 miles	516	214	473	516
310 miles	540	214	473	540
315 miles	532	214	473	532
320 miles	532	214	473	532
325 miles	532	214	473	574
330 miles	532	214	473	597
335 miles	532	214	473	606

Tariff authorities.—North Carolina Local Tariff No. 8, R. I. 100; Virginia Intrastate Tariff No. 3, R. I. 30; Interstate Local Tariff No. 5, I. C. C. A-200. 50 ICC. 34.

Exhibit No. 285

I. C. C. Docket No. 16295. Witness J. A. Streyer

Financial statement for railroads shown calendar year 1924

[Figures in boldface indicate deficits]

Road	Average miles main line operated	Total railway operating revenue	Total railway operating expense	Net revenue from railway operations	Railway tax accruals	Uncollectible railway revenue	Railway operating income	Total additions to railway operating income
Aberdeen & Rockfish R. R. Co.	44.9	$188,170.20	$155,858.48	$32,311.72	$5,094.67		$27,217.05	
Alabama, Florida & Gulf R. R. Co.	32	31,441.76	36,464.77	5,023.01	2,723.56		7,746.58	
Andalusia, Florida & Gulf Ry. Co.	25.5	35,198.69	25,913.36	9,280.12	3,397.95		5,682.17	
Atlantic & Yadkin Ry.	160.2	1,152,493.93	915,540.57	236,943.36	27,267.09	$75.93	209,609.34	$4,229.54
Birmingham & Southeastern Ry. Co.	66.89	256,493.73	208,715.15	47,778.58	4,800.00		42,978.58	
Blue Ridge Ry.	44	268,449.05	233,219.67	35,229.38	16,214.97	1,377.90	17,637.51	6,208.34
Buffalo, Union-Carolina R. R.	19.2	84,238.72	68,742.30	15,514.52	2,570.37		12,944.15	
Carolina & Northwestern Ry. Co.	133.5	863,319.51	620,469.30	242,850.21	29,448.98	197.25	213,204.08	111.60
Charlotte, Monroe & Columbia R. R.	17.85	27,204.58	20,860.05	2,455.47	2,007.41	25.32	4,437.88	
Chesterfield Lancaster R. R. Co.	36.72	95,311.74	93,128.87	2,182.87	5,174.16	16.46	3,007.75	
Collins & Glenville R. R. Co.	22	59,374.64	45,495.27	13,879.37	1,098.95		12,810.42	12,810.42
Columbia, Newberry & Laurens R. R. Co.	78	620,438.73	448,477.27	181,961.46	32,008.27		149,893.19	3,022.09
Cumberland Manchester R. R. Co.	25.59	298,826.63	167,650.16	51,180.47	4,073.59		47,112.88	9,948.00
Danville & Western Ry. Co.	82.04	543,141.46	413,094.06	130,047.40	25,232.34	1,289.89	103,525.17	150.00
Dover Southbound R. R. Co.	24.77	36,470.01	33,310.71	3,159.30	2,955.75	5.07	198.48	8,946.18
East Tennessee & Western North Carolina R. R. Co.	66	321,230.92	228,414.05	92,816.89	25,228.27		65,588.62	100.00
East and West Coast Ry.	50.12	116,173.84	106,191.95	9,981.89	19,525.99	77.52	9,021.62	886.00
Elberton & Eastern R. R. Co.	35.51	126,273.21	81,095.15	45,178.06	3,497.42		41,680.64	1,215.97
Fernwood, Columbia & Gulf R. R. Co.	44.14	322,653.00	234,928.00	87,925.00	17,815.00	55.00	70,055.00	

Financial statement for railroads shown calendar year 1914—Continued

[Figures in boldface indicate deficits]

Road	Average miles main line operated	Total railway operating revenue	Total railway operating expense	Net revenue from railway operations	Railway tax accruals	Uncollectible railway revenue	Railway operating income	Total additions to railway operating income
Flemingsburg & Northern R. R. Co.	7	$40,598.90	$30,696.61	$9,902.29	$692.30	.....	$9,209.99	.....
Flint River & Northeastern R. R. Co.	23.62	60,645.92	36,370.29	15,675.63	3,595.50	.....	1,680.30	$153.00
Florida Central & Gulf Ry.	23.47	53,899.36	32,996.62	20,677.77	14,676.42	.....	62,262.69	12,025.50
Frankfort & Cincinnati Ry. Co.	46.1	95,725.29	113,910.10	17,184.89	3,580.66	$135.96	20,910.68	.....
Garyville Northern R. R. Co.	35	109,184.70	80,230.84	18,954.06	3,541.19	.....	15,412.67	80.39
Georgia, Ashburn, Sylvester & Camilla Ry.	41.98	114,625.92	90,623.96	23,999.96	4,911.30	.....	20,088.66	23.00
Georgia, Florida & Alabama Ry. Co.	192.66	997,952.14	705,494.36	231,958.18	56,254.29	1,869.77	169,935.12	.....
Georgia Northern Ry. Co.	67.76	349,534.22	254,184.35	94,349.87	16,902.10	.....	77,446.77	111.00
Georgia & Florida Ry.	600.16	1,780,988.66	1,225,692.61	425,196.20	77,994.25	952.32	377,179.70	9,891.26
Gainesville & Northwestern R. R. Co.	37	97,894.73	114,152.76	16,669.68	2,718.11	.....	19,888.14	600.00
Greene County R. R. Co.	19.69	60,777.09	43,615.69	6,161.97	1,924.29	.....	1,924.29	.....
Greenville & Northern Ry. Co.	10	44,120.13	40,634.30	3,985.83	2,109.18	.....	6,074.96	.....
Hampton & Branchville R. R. Co.	24	54,695.62	43,580.30	11,105.43	1,781.05	25.46	9,318.92	.....
High Point, Randleman, Asheboro & Southern R. R.	27.64	144,013.93	120,276.30	20,737.33	5,959.38	137.16	14,640.79	.....
High Point, Thomasville & Denton R. R. Co.	24	62,674.71	54,410.75	10,265.96	1,999.00	.....	17,663.96	.....
Kentucky & Tennessee Ry.	73.08	290,698.31	226,963.70	59,922.61	8,610.45	.....	51,222.16	.....
Lancaster & Chester Ry. Co.	20	208,627.09	140,410.47	68,416.62	9,768.43	.....	58,648.19	.....
Lawndale Ry. & Industrial Co.	11.09	21,208.14	19,614.35	1,633.79	435.92	.....	1,197.87	.....
Live Oak, Perry & Gulf R. R. Co.	109	369,912.32	213,972.38	95,790.94	25,102.61	10.36	70,677.74	23,478.40
Louisville & Wadley R. R. Co.	14	52,917.54	33,207.27	20,710.27	3,827.71	10.86	16,872.69	.....
Macon, Dublin & Savannah R. R. Co.	92.26	718,185.70	554,619.19	163,566.51	26,552.39	177.23	136,855.90	9,068.08
The Marietta & Bloomingsburg R. R. Co.	43.56	95,552.35	64,645.97	31,207.38	5,790.00	.....	25,507.38	.....
Marion, Alma & Southbound R. R. Co.	15.15	23,274.60	20,827.10	2,447.50	975.18	.....	1,472.32	.....
Morgan & Fentress Ry. Co.	15.5	39,526.12	34,573.92	4,954.60	1,326.60	.....	6,103.49	.....

Muscle Shoals, Birmingham & Pensacola Ry.	142.94	208,943.43	350,286.82	61,342.30	24,551.07	1,512.67	107,007.18	58,883.27
The Natchez, Columbia & Mobile R. R. Co.	29.42	183,315.43	208,190.01	24,874.58	5,928.91		30,813.58	6,120.00
Oneida & Western R. R. Co.	30.15	197,112.23	186,236.21	40,876.02	14,598.65		26,277.37	391.86
Pearl River Valley R. R. Co.	25.34	148,411.41	132,121.98	16,289.43	6,379.86		9,909.57	5,022.50
The Pickens R. R. Co.	9.3	29,043.88	24,663.53	4,381.35	910.44		3,470.91	
Raleigh & Charleston R. R. Co.	42.58	125,973.82	110,268.85	15,704.98	5,831.77	1.11	9,872.10	812.40
Savannah & Atlanta Ry.	147.17	1,084,101.72	898,515.48	185,586.24	19,000.00	12,264.92	154,321.32	1,194.12
Savannah & Statesboro Ry. Co.	32.60	81,661.16	75,577.94	6,083.22	4,151.90	98.52	1,832.80	813.81
Sylvania Central Ry. Co.	14.65	39,626.19	35,552.16	4,074.03	1,770.00	5.33	2,298.70	
Tallulah Falls Ry. Co.	57.1	211,772.21	180,487.04	23,285.17	5,613.81	161.75	17,509.61	142.18
Tampa & Gulf Coast R. R. Co.	96.09	1,084,355.77	636,116.85	448,238.92	23,749.63	382.07	424,307.22	3,311.67
Tampa & Jacksonville Ry. Co.	56	101,615.55	87,231.86	14,383.69	8,209.84		6,173.75	
Tampa Northern R. R. Co.	64.26	243,056.00	206,736.50	36,298.50	31,541.13		4,757.37	37,241.76
Tennessee, Kentucky & Northern R. R. Co.	19	88,546.90	65,076.82	23,464.08	4,158.84		19,305.24	
Townsville R. R. Co.	12	14,235.00	10,695.00	3,540.00	720.00		2,820.00	
The Union Point & White Plains R. R. Co.	13.64	47,079.98	25,328.29	21,751.57	1,104.00	39.12	20,608.45	
Wadley Southern Ry. Co.	98.74	119,242.36	131,244.93	12,002.57	13,508.53	162.66	25,673.76	842.80
Ware Shoals R. R. Co.	5	51,399.19	49,388.56	2,010.63	608.39		1,402.24	
Washington & Lincolnton R. R. Co.	20.1	110,445.00	70,982.00	39,463.00	3,072.00	2,619.00	33,772.00	
Wellington & Powellsville R. R. Co.	22	66,434.15	71,167.61	4,733.46	1,476.87		6,210.33	600.00
Wrightsville & Tennille R. R. Co.	103.6	352,722.40	278,661.28	74,061.12	27,426.06	1,631.53	45,003.53	3,910.83
Yadkin R. R. Co.	52.23	358,205.65	255,119.61	98,085.04	9,120.93	90.13	88,873.98	475.73
Total								

Financial statement for railroads shown calendar year 1924

[Figures in bold-face indicate deficits]

Road	Deductions from railway operating income	Net railway operating income	Non-operating income	Gross income	Deductions from gross income	Net income	Total investment
Aberdeen & Rockfish R. R. Co.	$25,343.16	$1,883.89	$1,877.45	$3,771.34	$15,528.41	$11,754.07	$436,948.40
Alabama, Florida & Gulf R. R. Co.	6,637.00	14,283.56			3,334.25	17,717.61	147,413.07
Andalusia Florida & Gulf Ry. Co.	3,130.00	2,552.17		7,365.52		1,083.35	26,905.49
Atlantic & Yadkin Ry.	240,774.31	26,044.43	6,674.24	20,270.19	70,745.53	91,015.72	2,661,269.18
Birmingham & Southeastern Ry. Co.	25,228.84	17,749.74	545.26	18,295.00	606.05	17,688.95	1,630,112.36
Blue Ridge Ry.	1,913.90	21,931.95	4,653.61	26,585.56	10,605.70	15,979.86	586,380.56
Buffalo, Union-Carolina R. R.	9,224.48	4,719.67	478.00	5,197.27	11,166.02	5,969.75	580,343.81
Carolina & Northwestern Ry. Co.	115,162.11	98,153.57	5,307.17	103,460.74	109,518.05	6,057.31	4,125,692.36
Charlotte, Monroe & Columbia R. R.	4,182.15	8,610.71	601.14	8,218.57	4,792.47	12,011.04	123,019.51
Chesterfield & Lancaster R. R. Co.	16,087.47	10,095.22	972.30	18,122.92	22,068.59	40,191.51	837,979.36
Collins & Glennville R. R. Co.	8,505.47	4,304.95		4,304.95		4,304.95	53,210.90
Columbia, Newberry & Laurens R. R. Co.	82,504.10	70,411.18	12,480.89	162,374.08	127,039.70	35,353.38	2,316,614.65
Cumberland & Manchester R. R. Co.	7,435.69	49,625.19	15.00	49,640.19	44,084.90	5,555.29	1,494,339.49
Danville & Western Ry. Co.	7,283.19	96,392.58	3,790.45	100,183.03	114,085.61	14,302.58	2,334,601.63
Dover & Southbound R. R. Co.	2,396.54	6,647.64	268.75	6,916.39	3,900.00	3,016.39	201,696.22
East Tennessee & Western N. C. R. R. Co.	9,551.88	58,136.74	11,031.82	69,168.38	25,398.85	43,769.71	1,382,940.30
East and West Coast Railway	36,736.37	45,491.99	1,609.08	43,882.31	46,205.72	90,088.03	815,935.38
Elberton & Eastern R. R. Co.	20,481.93	22,416.08	30,570.97	3,100.67	42,317.79	39,217.12	663,843.16
Fernwood, Columbia & Gulf R. R. Co.	23,122.00	46,933.00	2,378.00	49,311.00	42,877.00	6,434.00	904,835.00
Flemingsburg & Northern R. R. Co.	1,214.50	7,793.62		7,793.62	9,046.09	1,252.47	203,088.30
Flint River & Northeastern R. R. Co.	6,612.90	3,415.14	132.48	3,547.62	8,816.64	5,269.02	247,637.70
Florida, Central & Gulf Ry.	11,610.78	42,332.97	516.35	41,816.62	35,932.42	77,748.04	784,693.34
Frankfort & Cincinnati Ry. Co.	7,627.19	28,580.05	365.55	29,272.50	7,496.83	35,669.33	273,499.92
Garyville Northern R. R. Co.	11,735.68	3,738.38	128.56	3,866.94	9,180.00	5,293.06	147,682.44
Georgia, Ashburn, Sylvester & Camilla Ry.	12,487.94	16,633.72	151.48	16,685.20	1,190.29	15,494.91	176,363.01

Georgia, Florida & Alabama Ry. Co.		169,955.12	10,019.94	179,954.96	73,341.57	106,613.39	2,797,114.12
Georgia Northern Ry. Co.	22,743.75	54,814.02	2,017.51	56,831.53	22,115.00	34,716.53	1,105,253.48
Georgia & Florida Ry.	173,449.86	215,621.10	14,284.24	227,905.34	657,861.77	629,956.43	17,380,039.03
Gainsville & Northwestern R. R. Co.	22,335.68	53,998.09	18,984.77	90,580.41	32,870.30	63,430.71	832,080.24
Greene County R. R. Co.	5,721.81	1,484.14	177.00	1,307.14	4,062.55	1,269.69	151,552.98
Greenville & Northern Ry. Co.	5,253.18	11,208.13	630.92	10,672.21	24,415.62	55,092.43	1,239,204.36
Hampton & Branchville R. R. Co.	5,911.46	3,407.46		3,407.46	2,928.97	477.49	181,341.74
High Point, Randleman, Asheboro & Southern R. R.	19,144.72	6,304.13	1,636.68	7,967.45	47,787.70	86,655.15	732,698.15
High Point, Thomasville & Denton R. R. Co.	17,133.55	530.61	2,458.38	2,988.99	6,209.79	3,178.80	376,229.99
Kentucky & Tennessee Ry.	16,536.17	34,693.90	4,921.94	39,605.93	5.83	39,600.10	1,098,913.02
Lancaster & Chester Ry. Co.	16,651.20	42,198.99	2,868.64	45,095.63	8,100.00	36,995.63	708,665.23
Lawndale Ry. & Industrial Co.	240.69	957.87		957.87		957.87	89,104.44
Live Oak, Perry & Gulf R. R. Co.	6,125.31	90,030.83	8,955.45	98,986.28	39,376.39	59,609.89	1,695,131.69
Louisville & Wadley R. R. Co.	5,702.30	11,169.70	2,041.48	13,211.18		13,211.18	111,940.80
Macon, Dublin & Savannah R. R. Co.	80,981.91	65,342.04	4,719.39	70,061.43	87,622.13	17,560.50	3,824,751.51
The Marianna & Blountstown R. R. Co.	9,180.07	16,327.31	11.46	16,338.77	22,793.89	6,455.12	195,457.74
Maxton, Alma & Southbound R. R. Co.	2,508.00	1,660.68		1,660.68	3,221.88	4,215.86	188,536.71
Morgan & Fentress Ry. Co.	2,682.00	9,045.49	484.90	9,530.39	24,925.00	35,455.39	792,776.59
Muscle Shoals, Birmingham & Pensacola Ry.	46,110.42	94,684.20	66.00	94,618.20	52,538.19	142,106.47	891,476.26
The Natchez, Columbia & Mobile R. R. Co.	9,741.01	34,442.57		34,442.57		34,442.57	672,000.83
Oneida & Western R. R. Co.	8,038.12	18,621.11	180.00	18,441.11	693.33	18,117.78	620,691.16
Pearl River Valley R. R. Co.	17,902.91	3,870.86	4,875.54	14,785.11	24,756.55	9,971.44	600,031.94
The Pinkney R. R. Co.	1,902.77	1,570.14		3,470.91	4,732.57	1,261.66	156,096.37
Raleigh & Charleston R. R. Co.	71,224.46	18,489.96	5,836.13	4,703.96	36,457.61	41,500.57	1,144,124.65
Savannah & Atlanta Ry.	134,871.83	20,643.61	450.30	21,059.90	467,553.92	446,453.98	4,709,617.55
Savannah & Statesboro Ry. Co.	6,928.11	4,781.80	1,790.22	2,491.28	15,848.98	18,340.26	508,467.86
Sylvania Central Ry. Co.	2,400.46	101.76	424.68	322.92	1,710.80	1,387.90	81,672.84
Tallulah Falls Ry. Co.	8,962.15	8,998.64	1,149.19	9,817.83	76,014.39	66,196.56	1,752,349.40
Tampa & Gulf Coast R. R. Co.	193,094.01	254,524.88	8,331.63	242,806.51	100,977.84	141,878.67	1,993,694.40
Tampa & Jacksonville Ry. Co.	7,682.00	998.25	1,775.00	999.75	28,132.49	27,265.74	1,211,098.69
Tampa Northern R. R. Co.	52,647.69	10,647.90	17,227.01	6,579.11	121,895.10	115,196.99	2,031,957.56
Tennessee, Kentucky & Northern R. R. Co.	6,580.04	13,760.20		13,760.20	7,372.67	5,393.53	899,152.50
Townsville R. R. Co.	3,002.00	918.00			2,448.00	1,530.00	276,590.00
The Union Point & White Plains R. R. Co.	14,049.19	6,509.26	202.58	20,871.03	15,076.64	5,794.39	94,923.53
Wadley Southern Ry. Co.	9,315.23	36,143.29	748.06	35,396.63	40,032.22	72,208.64	1,403,050.64

Financial statement for railroads shown calendar year 1924—Continued

[Figures in bold-face indicate deficits]

Road	Deductions from railway operating income	Net railway operating income	Non-operating income	Gross income	Deductions from gross income	Net income	Total investment
Ware Shoals R. R. Co.	$120.00	$1,282.24		$1,402.24	$1,282.24	$210.00	$98,372.00
Washington & Lincolnton R. R. Co.	16,998.00	16,784.00	**$3,963.00**	23,630.00	25,730.00	**1,601.00**	280,284.00
Wellington & Powellsville R. R. Co.	2,000.00	**9,279.33**		**9,279.33**	1,168.53	**9,447.66**	191,593.00
Wrightsville & Tennille R. R. Co.	30,224.50	16,699.96	3,773.49	22,403.35	10,000.19	12,403.16	1,000,600.23
Yadkin R. R. Co.	14,925.36	14,436.35	3,021.13	57,447.48	102,577.60	**45,130.20**	1,505,057.90
Total		1,020,267.44				**1,[illegible]**	60,544,[illegible]

Return, 1.[illegible] per cent on total investment.

Net income, [illegible] per cent on total investment.

SOURCE.—Statements of individual lines shown and taken by them from their reports to the Interstate Commerce Commission.

EXHIBIT No. 285

I. C. C. Docket No. 16295. Witness, J. A. Streyer

Financial condition, calendar year, 1923

[Figures in bold face indicate deficits]

Road	Total operating revenues	Total operating expenses		Railway tax revenue	Uncollectible railway revenues	Hire of equipment and joint facility net rentals	Net railway operating income (amount)
		Amount	Ratio to total revenue				
Aberdeen & Rockfish R. R.	$181,961.58	$125,613.22	69.03	$5,263.86		$25,910.92	$51,084.50
Alabama, Tennessee & Northern R. R.	988,684.24	946,092.15	95.69	23,038.89	$1.30	42,933.40	48,279.69
Atlantic & Western R. R. Co.	83,610.65	67,223.93	80.40	1,909.50		14,282.42	294.80
Atlantic and Yadkin Ry.	1,025,444.65	994,340.26	96.99	33,504.27	467.78	131,790.49	188,946.73
Birmingham & Southeastern Ry. Co.	196,642.34	158,871.30	80.80	2,460.00		19,618.21	33,770.94
Buffalo, Union-Carolina R. R.	113,900.00	84,700.00	74.38	3,450.00		15,000.00	181.00
Carolina & Northwestern Ry.	913,900.00	685,062.00	75.03	30,280.00	94.00	121,447.00	76,420.00
Chattahoochee Valley Ry. Co.	260,071.98	179,955.62	69.19	8,077.03		38,453.35	33,585.98
Danville & Western Ry.	672,374.00	494,121.00	73.49	27,804.94		74,016.00	41,950.00
Durham & Southern Ry. Co.	647,246.00	461,897.00	71.36	26,898.00	3,193.00	22,260.00	130,998.00
East & West Coast Ry.	863,434.30	576,434.18	64.51	45,917.01		76,222.13	84,860.98
Elberton & Eastern R. R. Co.	199,342.82	102,644.86	93.67	17,497.65		26,201.01	37,002.30
Flint River & Northeastern R. R. Co.	137,437.37	91,271.21	66.90	3,246.69	36.77	23,089.46	18,143.24
Florida, Central & Gulf R. R.	43,248.70	20,211.66	67.54	3,155.82	8.00	5,093.25	5,780.97
Guryville Northern R. R. Co.	58,042.71	37,480.21	109.37	12,405.90		2,397.54	14,948.55
Georgia & Florida Ry.	86,815.09	73,891.26	87.30	3,986.50		10,494.05	3,338.72
	1,755,526.00	1,346,788.00	75.99	74,745.00	962.00	115,250.00	236,746.00

Financial condition, calendar year, 1955—Continued

[Figures in bold face indicate deficits]

Road	Total operating revenues	Total operating expenses		Railway tax revenue	Un-collectible railway revenues	Hire of equipment and joint facility net rentals	Net railway operating income (amount)
		Amount	Ratio to total revenue				
Georgia, Ashburn, Sylvester & Camilla Ry. Co.	$99,685.69	$71,330.68	78.71	$6,478.62		$10,679.29	$2,126.75
Georgia, Florida & Alabama Ry. Co.	630,996.93	602,602.75	78.52	42,093.35	$608.00	57,577.43	77,666.40
Georgia Northern Ry.	316,150.12	230,482.41	74.31	16,954.32	112.16	23,180.77	41,460.76
The Greene County R. R. Co.	34,959.26	40,467.55	86.29	2,309.06		6,345.75	**2,462.98**
Hampton & Brunsville R. R.	36,686.77	37,686.73	80.12	2,271.31	14.69	7,267.75	**4,686.99**
Lancaster & Chester Ry. Co.	166,807.68	126,737.87	65.83	11,818.71		14,697.95	40,413.12
Lawrenburg & Southern R. R. Co.	140,906.69	89,307.12	63.43	4,777.68		19,946.19	25,680.62
Live Oak, Perry & Gulf R. R. Co.	352,252.13	210,894.44	59.79	20,228.55	15.77	6,695.09	121,602.57
Macon, Dublin & Savannah R. R.	735,360.06	660,217.23	87.04	20,514.62	193.25	78,250.45	**5,892.98**
Muscle Shoals, Birmingham & Pensacola Ry.	486,625.39	454,061.47	90.00	24,363.77		90,012.50	**180,998.96**
Natchez, Columbia & Mobile R. R.	365,264.96	198,991.85	119.84	5,699.86		9,285.75	**62,662.89**
Raleigh & Charleston R. R.	120,695.24	97,612.62	73.79	6,399.70	1.79	17,330.26	7,709.67
Savannah & Atlanta Ry.	3,867,291.92	515,685.99	85.79	19,709.60	961.62	157,640.58	**290,685.27**
Savannah & Statesboro Ry.	66,812.37	72,909.81	110.62	4,712.89	239.59	5,770.19	**17,912.84**
Shearwood Ry.	66,935.64	66,916.71	70.11	2,600.60		9,364.25	**8,180.99**
Sylvania Central R. R.	37,945.63	34,588.99	91.27	1,436.54	81.86	342.11	**1,281.13**
Tampa & Gulf Coast R. R.	600,985.68	452,155.25	75.24	30,654.10	86.90	108,611.62	19,427.63
Tampa Northern R. R.	227,194.51	179,339.68	79.96	11,663.63	3.36	5,493.90	10,633.60
Wadley Southern Ry.	119,011.73	135,548.90	114.66	10,773.57	660.04	8,125.86	**21,096.66**
Wrightsville & Tennille R. R.	354,680.66	279,986.91	79.75	25,227.64	1,667.75	21,412.00	22,776.36

SOURCE.—Reports of the carriers to the Interstate Commerce Commission.

Exhibit No. 285

I. C. C. Docket No. 16295. Witness J. A. Streyer

Financial statement calendar year 1924, except as shown

Road	Total operating revenues	Total operating expenses—car hire joint facility rentals, and taxes	Net railway operating income	Interest on funded and unfunded debt	Total investment
Bamberg, Erhardt & Walterboro R. R. Co.	$34,917.00	$33,044.35	$1,872.65	.....	[1] $80,964.00
Bennettsville & Cheraw R. R. Co.	113,866.84	93,222.57	18,644.27	5,050.00	[1] 311,176.00
Blue Ridge Ry. Co.[2]	272,760.33	267,807.20	4,953.13	6,000.00	.....
Fernwood, Columbia & Gulf R. R. Co.	322,853.00	275,920.00	46,933.00	39,555.00	[3] 866,632.00
The Greene County R. R. Co.	49,777.06	41,261.20	1,484.14	4,062.55	[1] 156,996.80
High Point, Thomasville & Denton R. R. Co.	83,674.71	82,446.85	1,227.86	6,268.79	[4] 276,320.00
The Northwestern R. R. of South Carolina	226,040.38	196,693.82	29,346.76	15,150.00	[3] 385,000.00
Tampa & Jacksonville R. R. Co.	101,615.55	102,523.80	908.25	28,132.40	[4] 1,211,058.69

[1] I. C. C. tentative valuation under protest.
[2] Year 1923 figures used.
[3] I. C. C. tentative valuation under protest plus additions and betterments since valuation.
[4] Book value.

Exhibit No. 287

I.C.C. Docket No. 16295. Witness, Streyer

Average revenue per ton, per ton-mile, per car-mile, and per car calendar year 1923

Road	Average miles operated (freight service)	Freight revenue (account 101)	Revenue tons carried	Revenue ton-miles	Loaded freight car-miles (including mixed trains)	Revenue ton-miles of road	Average haul per revenue ton	Average revenue per			Average revenue tons per loaded car	Average revenue tons per loaded car [1]
								Ton carried	Ton-mile	Loaded car-mile		
									Cents			
Aberdeen & Rockfish R. R.	44.90	$135,488.60	99,634	2,102,266	64,872	68,628	22.00	$1.35879	7.080	$1.94329	26.00	$40.55
Alabama, Tennessee & Northern R. R.	166.00	606,143.61	403,220	15,340,661	780,733	4,344,460	38.55	2.00568	5.197	1.0346		
Atlantic & Western R. R. Co.	34.00	73,052.02	73,927	911,124	36,703	37,963	10.00	.97300	6.220	1.2566	25.00	34.25
Atlantic and Yadkin Ry.	163.10	763,616.63	857,083	36,645,680	1,796,160			.86043	2.084	.42494		
Birmingham & Southeastern Ry. Co.	46.20	178,660.60	126,089	1,919,971	240,672	3,979	30.60	1.51314	9.326	1.72221	19.00	26.88
Buffalo, Union-Carolina R. R.	20.00	104,062.00	61,300	1,037,700	96,929	52,683		1.69641	9.641	1.07300		
Carolina & Northwestern Ry.	133.30	760,474.00	462,019	15,107,035	923,740	113,161	32.63	1.64580	5.034	.82328	16.25	26.66
Chattahoochee Valley Ry. Co.	44.53	241,134.91	170,720	5,055,260	165,766	2,955,240	46.40	1.34363	7.905	1.20964	22.90	30.64
Columbia, Newberry & Laurens R. R. Co.	72.00	584,941.00	447,486	16,032,995	1,304,324	240,427	40.70	1.16921	2.961	.39598	22.33	36.46
Danville & Western Ry.	62.04	342,737.00	238,744	7,893,342	678,703	96,216	33.06	2.27300	6.876	.90194	11.66	26.50
Durham & Southern Ry. Co.	59.97	527,622.60	330,774	13,656,573	674,436	197,699	36.24	1.64484	4.536	.78251	21.85	35.94
East & West Coast Ry.	30.12	67,971.64	68,392	1,302,048	113,708	23,084	13.64	.99402	7.318	.77388	16.37	10.55
Elberton & Eastern R. R. Co.	33.32	128,779.20	150,312	3,421,956	165,460	101,997	27.75	.86072	3.560	.77830		
Flint River & Northwestern R. R. Co.	39.95	60,260.55	43,049	930,640	67,066	33,150	16.81	.98202	6.476	.65640	21.40	20.12
Florida, Central & Gulf R. R.	29.67	51,220.60	103,023	1,966,411	94,434	62,910	19.40	.61614	2.706	.69795	22.67	11.19
Graysville Northern R. R. Co.	35.00	70,525.79	90,580	2,135,455	80,827	61,012	22.00	.76804	3.724	.98300	27.70	22.10
Georgia & Florida Ry.	606.34	14,226.30	878,222	94,107,055	4,371,206	297,300	93.87	1.62104	1.691	.22618	19.20	31.27
Georgia, Ashburn, Sylvester & Camilla Ry. Co.	65.98	96,357.77	72,066	1,990,826	134,679	35,011	26.26	1.20125	4.802	.64360	22.50	27.69

Georgia, Florida & Alabama Ry. Co.	192.86	665,867.10	443,413	31,511,144	1,436,697	163,389	71.06	1.30168	2.113	.45711	18.67	28.04
Georgia Northern Ry.	67.76	261,184.10	203,286	6,479,257	393,696	95,394	31.85	1.28418	4.031	.66342	21.10	27.09
The Greene County R. R. Co.	19.69	53,163.37	54,238	1,034,054	54,730	52,516	19.03	.97828	5.141	.97137	19.00	18.58
Hampton & Branchville R. R.	24.00	49,709.27	41,316	112,048	27,422	4,608		1.20314	4.436	1.81500		
Lancaster & Chester Ry. Co.	20.00	175,790.34	124,662	3,160,552	100,842	108,995	25.00	1.41013	5.500	1.09294	25.00	35.25
Leuringburg & Southern R. R. Co.	30.00	138,000.63										
Live Oak, Perry & Gulf R. R. Co.	80.19	281,549.57	228,707	6,382,618	449,557	71,562	27.91	1.23105	4.411	.62628	27.00	33.00
Macon, Dublin & Savannah R. R.	92.59	583,086.74	528,940	34,286,463	1,673,477	370,304	64.82	1.10615	1.706	.34962	20.49	22.67
Muscle Shoals, Birmingham & Pensacola Ry.	142.94	386,321.85	331,321	28,850,084	1,058,786	201,834	87.07	1.16000	1.399	.36487	27.25	31.77
Natchez, Columbus & Mobile R. R.	29.42	156,472.35	367,616	8,567,556	410,249	291,215	23.31	.42364	1.626	.38140	20.55	8.74
Raleigh & Charleston R. R.	42.38	111,411.56	109,561	1,271,280	107,564	29,927	11.98	1.01689	8.764	1.03580	11.82	12.02
Savannah & Atlanta Ry.	147.17	972,755.69	559,960	67,240,720	3,143,583	456,953	120.31	1.73719	1.450	.39400	15.00	26.17
Savannah & Statesboro Ry.	32.69	47,752.38	39,934	834,053	63,394							
Shearwood Ry.	38.00	59,987.41	46,080	808,874	49,792	22,865	18.90	1.30104	6.890	1.20275	17.14	22.26
Sylvania Central R. R.	14.65	26,287.00	21,320	253,687	24,779	17,317	11.90	1.23297	1.036	1.06090	10.24	12.39
Tampa & Gulf Coast R. R.	86.09	442,839.37	370,401	14,124,735	690,073	104,009	38.13	1.19556	3.135	.67089	21.39	25.57
Tampa Northern R. R.	64.26	132,841.34	262,274	6,512,953	210,680	101,353	24.83	.50649	2.040	.63032	30.90	15.65
Wadley Southern Ry.	88.74	92,954.96	68,750	1,944,638	158,053	21,914	28.29	1.35207	4.780	.58613	12.30	16.63
Wrightsville & Tennille R. R.	103.60	276,301.59	228,082	7,854,288	457,492	75,814	34.30	1.20665	3.518	.60365	17.17	20.71

[1] Represents average revenue per ton by the average revenue tons per loaded car.

SOURCE.—Reports of the carriers to the Interstate Commerce Commission.

Exhibit No. 442

I. C. C. Docket 16295. Witness, Hayward

Comparison of rates on fertilizers from Meridian, Miss., to various points in Alabama and Georgia with rates from Montgomery, Ala., Atlanta, Ga., for similar distances

From—	To—	Miles	Rate per ton
Meridian, Miss	York, Ala	27	153
Montgomery, Ala	Hornsby, Ala	27	134
Atlanta, Ga	Lawrenceville, Ga	35	135
Meridian, Miss	Livingston, Ala	36	171
Montgomery, Ala	Cuny	36	135
Atlanta, Ga	Lawrenceville, Ga	35	135
Meridian, Miss	Boligee, Ala	53	196
Montgomery, Ala	Selma, Ala	50	113
Atlanta, Ga	Bremen, Ga	53	139
Meridian, Miss	Akron, Ala	71	225
Montgomery, Ala	Cusseta	77	180 (175)
Atlanta, Ga	Rome, Ga	73	180
Meridian, Miss	Moundsville, Ga	87	234
Montgomery, Ala	Nelson, Ala	85	205 (180)
Atlanta, Ga	Macon, Ga	90	205
Meridian, Miss	Crabtree, Ala	93	241
Montgomery, Ala	Sylacauga, Ala	86	180
Atlanta, Ga	Anniston, Ala	104	205
Meridian, Miss	Tuscaloosa, Ala	97	243
Montgomery, Ala	Sylacauga, Ala	86	180
Atlanta, Ga	Anniston, Ala	104	205
Meridian, Miss	Jasper, Ala	162	311
Montgomery, Ala	Enterprise, Miss	180	260
Atlanta, Ga	Birmingham, Ala	148	214
Meridian, Miss	Lewis, Ala	174	340
Montgomery, Ala	Lauderdale, Miss	172	259
Atlanta, Ga	Augusta, Ga	171	262
Meridian, Miss	Pell City, Ala	186	372
Montgomery, Ala	Newton, Miss	240	311
Atlanta, Ga	Cuthbert, Ga	161	335
Meridian, Miss	Uniontown, Ala	260	363
Montgomery, Ala	Macon, Miss	203	230
Atlanta, Ga	Whitehall, Ala	200	262
Meridian, Miss	Opelika, Ala	220	300
Montgomery, Ala	Pelahatchie, Miss	223	330
Atlanta, Ga	Tuscaloosa, Ala	272	311
Meridian, Miss	Jasper, Ala	226	340
Montgomery, Ala	State Line, Miss	226	260
Atlanta, Ga	Crabtree, Ala	226	260
Atlanta, Ga	Selma, Ala	225	214
Meridian, Miss	Eufaula, Ala	255	360
Montgomery, Ala	Brandon, Miss	224	330
Atlanta, Ga	Moundsville, Ala	287	372
Meridian, Miss	Cedartown, Ga	270	360
Montgomery, Ala	Forvis, Miss	256	330

***Comparison of rates on fertilizers from Meridian, Miss., to various points in Alabama and Georgia with rates from Montgomery, Ala., Atlanta, Ga., for similar distances*—Continued**

From—	To—	Miles	Rate per ton
Atlanta, Ga.	Akron, Ala.	248	393
Meridian, Miss.	Americus, Ga.	268	426
Montgomery, Ala.	Latonia, Miss.	292	338
Atlanta, Ga.	York, Ala.	291	349
Meridian, Miss.	Atlanta, Ga.	319	360
Montgomery, Ala.	Acra, Miss.	325	404
Atlanta, Ga.	Meridian, Miss.	319	315
Meridian, Miss.	Florala, Ala.	343	307
Montgomery, Ala.	Forest, Miss.	308	327
Atlanta, Ga.	Macon, Miss.	341	394
Meridian, Miss.	Elberton, Ga.	426	653
Atlanta, Ga.	Hillsdale, Miss.	437	459

Tariff authorities.—Southern Ry. Georgia Fertilizer Tariff 6, I. C. C. A-9603; A. & W. P. Fertilizer, Tariff 1305-B I. C. C. 1145; Southern Ry. Tariff I. C. C. A-9489; Alabama Great Southern, Tariff 1500-A I. C. C. 1544.

Exhibit 500

I. C. C. Docket 16295. Witness, Bosley

Southern region, class one carriers (exclusive Pocahontas district) for calendar years ended December 31

	1922	1923	1924	1925 (first 6 months)
Property investment, including materials, supplies, and cash on hand	$2,576,404,921	$2,651,000,000	$2,741,431,000	.....
Tentative valuation, plus net additions since Jan. 1, 1920	2,174,714,000	2,220,474,000	[1] 2,310,985,000	.....
Property investment in excess tentative valuation plus net additions since Jan. 1, 1920	401,690,921	430,526,000	[1] 430,526,000	.....
Net railway operating income after deducting Federal income taxes	109,056,778	129,824,682	142,554,438	$75,124,038
Rate of return on property investment after deducting Federal income taxes (per cent)	4.26	4.90	5.20	5.55

[1] No carriers' figures available showing tentative valuation plus net additions since Jan. 1, 1920, as of Jan. 31, 1924. Those shown are arrived at by adding to tentative valuation figures plus net additions since Jan. 1, 1920, as of Jan. 31, 1923, same amount as carriers' property investment account increased 1924 over 1923.

Southern region, class one carriers (exclusive Pocahontas district) for calendar years ended December 31—Continued

	1922	1923	1924	1925 (first 6 months)
Rate of return on tentative valuation plus net additions since 1920 after deducting Federal income taxes (per cent)	5.04	5.85	6.17	[1] 6 to 7
Net railway operating income before deducting Federal income taxes	$125,333,481	$148,371,065	$162,919,352	$85,836,043
Rate of return on tentative valuation plus net additions since Jan. 1920 (before deducting Federal income taxes) (per cent)	5.76	6.66	[1] 7.05	[1] 7 to 8
Fixed as fair rate of return by commission in reduced rates, 1922 (per cent)	5.75	5.75	5.75	5.75
Net railway operating income in excess of fair return of 5.75 per cent on tentative valuation, plus net additions since Jan. 1, 1920 (before deducting Federal income taxes)	$287,406	$20,033,810	$30,042,314	.....

[1] No carriers' figures available showing tentative valuation plus net additions since Jan. 1, 1920, as of Jan. 31, 1924. Those shown are arrived at by adding to tentative valuation figures plus net additions since Jan. 1, 1920, as of Jan. 31, 1923, same amount as carriers' property investment account increased 1924 over 1923.

NOTE.—Carriers continue to show their net railway operating income after deducting Federal income taxes and to show rate of return on book value or property investment. Commission declined to accept book value or property investment account as fair valuation in Ex Parte 74 and fixed tentative valuation much less for rate-making purposes. As to the impropriety of deducting Federal income taxes before arriving at net railway operating income and rate of return the Commission said in *Reduced Rates, 1922:*

"In our view railroad corporations should, like other corporations, pay their Federal income taxes out of the income, rather than collect it, in effect, from the public in the form of transportation charges adjusted to enable it to retain the designated fair return over and above the tax."

O

SUPREME COURT OF THE UNITED STATES.

No. 166.—October Term, 1928.

The State of Alabama and Alabama Public Service Commission, Appellants, *vs.* The United States of America, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, et al.	Appeal from the District Court of the United States for the Northern District of Alabama.

[April 8, 1929.]

Mr. Justice Sutherland delivered the opinion of the Court.

This suit was brought by appellants to set aside an order of the Interstate Commerce Commission establishing intrastate rates on fertilizers and fertilizing material in Alabama; and to enjoin numerous railroad companies from making such rates effective. The ground of the Commission's order was that the maintenance of such intrastate rates on a lower basis than those found reasonable would result in unjust discrimination against, and undue prejudice to persons and localities in, interstate commerce.

The order of the Commission is within its general powers, *Houston & Texas Ry.* v. *United States*, 234 U. S. 342, 354-5, 358; *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 585, *et seq.*; and was made after a full inquiry. After a review of the record, the court below denied an application for a preliminary injunction. The case is still pending in the court below for final hearing, and the present appeal relates only to the interlocutory order.

Congress has manifested its solicitude that the power to grant writs of injunction against orders of the Interstate Commerce Commission shall be exercised with special care, by requiring the consideration of applications to be made by three judges and by giving an appeal directly to this Court both in the case of interlocutory

orders and final decrees. *Virginian Ry.* v. *United States*, 272 U. S. 658, 672. But there is nothing in the legislation to suggest that in the exercise of the judicial power in respect of such writs pertinent principles of equity as theretofore understood, are to be disregarded or modified. It is well-established doctrine that an application for an interlocutory injunction is addressed to the sound discretion of the trial court; and that an order either granting or denying such an injunction will not be disturbed by an appellate court unless the discretion was improvidently exercised. *Meccano, Ltd.*, v. *John Wanamaker*, 253 U. S. 136, 141; 2 High on Injunctions (4th Ed.) § 1696. And see *Rice & Adams Corporation* v. *Lathrop*, — U. S. — (February 18, 1929). The rule generally to be applied in the exercise of that discretion, is stated in our recent decision in *Ohio Oil Co.* v. *Conway*, — U. S. —, (March 5, 1929).

That the doctrine to be followed in reviewing such an order applies in the case of an order of a court of three judges denying an interlocutory injunction does not admit of doubt. *United Fuel Gas Co.* v. *Public Service Commission of West Virginia* (January 2, 1929), 278 U. S. 322, 326; *Chicago, G. W. Ry.* v. *Kendall*, 266 U. S. 94, 100. The duty of this Court, therefore, upon an appeal from such an order, at least generally, is not to decide the merits but simply to determine whether the discretion of the court below has been abused. See *United States* v. *Balt. & Ohio R. R. Co.*, 225 U. S. 306, 325. An examination of the record here reveals no such abuse, and we must remand the case to the court below for final disposition on the merits.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.